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No. 98-432

TAX REFORM ACT OF 1983

REPORT

OF THE

COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES

ON

H.R. 4170

together with

SUPPLEMENTAL, ADDITIONAL, AND ADDITIONAL SUPPLEMENTAL VIEWS

[Including cost estimates of the Congressional Budget Office]

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SUMMARY OF CONTENTS

Page

I. OVERVIEW AND BACKGROUND 8

II. SUMMARY OF THE BILL 14

III. GENERAL REASONS FOR THE BILL 42

IV. REVENUE AND OUTLAY EFFECTS OF THE BILL 48

V. EXPLANATION OF THE BILL 55

- Title I—Tax-Exempt Entity Leasing Provisions 55
- Title II—Life Insurance Tax Provisions 93
- Title III—Revision of Private Foundation Provisions 163
- Title IV—Tax Simplification Provisions 188
- Title V—Fringe Benefit Provisions 285
- Title VI—Technical Corrections 306
- Title VII—Tax-Exempt Bond Provisions 357
- Title VIII—Miscellaneous Revenue Matters 389
- Title IX—Social Security Disability Benefits 410
- Title X—Medicare Budget Reconciliation Amendments 444
- Title XI—Trade Adjustment Assistance Programs. 467

VI. BUDGET EFFECTS AND VOTE OF THE COMMITTEE 470

VII. OTHER MATTERS TO BE DISCUSSED UNDER HOUSE RULES. 485

VIII. CHANGES IN EXISTING LAW MADE BY THE BILL AS REPORTED 489

IX. SUPPLEMENTAL VIEWS, ADDITIONAL SUPPLEMENTAL VIEWS, AND ADDITIONAL VIEWS 1297

CONTENTS

Page

I. OVERVIEW AND BACKGROUND 8
  A. Overview 8
  B. Legislative Background 11

II. SUMMARY OF THE BILL 14

III. GENERAL REASONS FOR THE BILL 42

IV. REVENUE AND OUTLAY EFFECTS OF THE BILL 48

V. EXPLANATION OF THE BILL 55

  Title I—Tax-Exempt Entity Leasing Provisions 55

  A. Present Law 55
  B. Reasons for Change 62
  C. Explanation of Provisions 66
    1. Overview 66
    2. Definition of tax-exempt entity 66
    3. Tax-exempt use property 67
    4. Depreciation 72
    5. Investment tax credit 74
    6. Property used under certain services contracts 75
    7. Short-term lease exception 84
    8. Lease term 85
    9. Definition of a related party 85
    10. Exceptions 86
    11. Regulations 86
  D. Effective Date 86
  E. Revenue Effect 92

  Title II—Life Insurance Tax Provisions 93

  A. Present Law 93
    1. Pre-1959 taxation of life insurance companies 93
    2. The 1959 Act 93
    3. TEFRA changes 96
  B. Reasons for Change 99
  C. Explanation of Provisions 104
    1. Overview 104

Page

2. Tax treatment of life insurance companies 106
    a. Definition of a life insurance company 106
    b. Computation of life insurance company taxation income 108
    c. Policyholder surplus accounts 114
    d. Deductions with respect to reserves 115
    e. Policyholder dividends 122
    f. Operations loss deduction 128
    g. Accounting provisions 130
    h. Definition of company's share and policyholder's share 132
    i. Foreign tax credit 134
    j. Foreign life insurance companies' minimum surplus 136
    k. Contiguous country branches of U.S. life insurance companies 140
    l. Rules relating to capital gains and losses.. 140
    m. Technical and conforming amendments.. 141
    n. Effective date and transitional rules 142
3. Taxation of life insurance 144
    a. Definition of life insurance contract 144
    b. Treatment of certain annuity contracts.... 151
    c. Policyholder loans 152
    d. Group-term life insurance purchased for employees 154
4. Nondeductible contributions to individual retirement plans 156
5. Studies (sec. 241 of the bill) 159
    a. Revenue reports 159
    b. Report on segment balance and other issues 159
6. Revenue Estimates Relating to Title II of the bill 161

Title III—Revision of Private Foundation Provisions. 163

A. Limitations on Deduction for Contributions to Private Foundations 169
B. Exemption for Certain Operating Foundations from Excise Tax on Investment Income and Expenditure Responsibility Rules 165
C. Reduction in Section 4940 Excise Tax Where Charitable Payout Increases 166
D. Amendments to Payout Requirement 168
E. Abatement of First-Tier Excise Taxes in Certain Cases 170
F. Amendment to Voter Registration Rules 172
G. Definition of Family Member 173
H. Public Disclosure and Accessibility of Information on Foundations to Grant Applicants 174
I. Amendments to Excess Business Holding Rules.. 176
J. Exemption for Certain Games of Chance 181
K. Exception to Self-Dealing Rules for Certain Stock Transactions 182

Page

L. Termination of Status as Substantial Contributor 183
M. Review of Treasury Regulations on Expenditure Responsibility 184
N. Review of Treasury Regulations on Reliance on IRS Classifications 185
O. Revenue Effect 187

Title IV—Tax Simplification Provisions 188

A. Estimated Income Tax 188
B. Domestic Relations 191
  1. Transfers of property between spouses or incident to divorce 191
  2. Alimony judges 193
  3. Dependency exemption 197
  4. Innocent spouse relieved of liability in certain cases 200
  5. Estate tax treatment of certain property settlements 203
C. Revision of At-Risk Rules 205
D. Estate Tax Revisions 215
  1. Permanent rules for reforming governing instruments creating charitable remainder trusts and other charitable interests 215
  2. Alternate valuation date election 220
E. Foreign Tax Provisions 222
  1. Resident aliens 222
  2. Treatment of community property 231
  3. Foreign personal holding company provisions 233
  4. Section 1248 (relating to gain from sale or exchange of stock in foreign corporations) 237
  5. Coordination of subpart F with foreign personal holding company provisions 240
  6. Stapled stock; stapled entities 242
F. Miscellaneous Treasury Administrative Provisions 247
  1. Simplification of certain reporting requirements 247
  2. Removal of $1,000,000 limitation on working capital fund 250
  3. Increase in limitation on revolving fund for redemption of real property 251
  4. Removal of $1,000,000 limitation on authority to dispose of obligations 252
  5. Secretary of the Treasury authorized to accept gifts and bequests 253
  6. Extension of time for court review of jeopardy assessment where prompt service not made on United States 254
  7. Extension of period to assess unpaid taxes 256
  8. Lien on assets of financial institutions for unpaid drafts 257

Page

9. Disclosure of windfall profit tax to State tax agencies 258
10. Provisions relating to distilled spirits 259
    a. Repeal of occupational tax on manufacturers of stills 259
    b. Return of taxes on spirits used for food or medicinal purposes 260
    c. Disclosure of alcohol fuel producers to administrators of State alcohol laws 261
    d. Elimination of Government-supplied strip stamps for distilled spirits containers 262

G. Tax Court Provisions 264
1. Small tax cases 264
2. Annuities to survivors of Tax Court judges 265
3. Proceedings which may be assigned to commissioners 266
4. Special trial judges 267
5. Publicity of Tax Court proceedings 268
6. Retirement age for Tax Court judges 269
7. Revenue effect 269

H. Simplification of Income Tax Credits 270

I. Miscellaneous Tax Provisions 272
1. Rollover of certain partial distributions from qualified plans 272
2. Treatment of certain related party transactions 275
3. Preferred stock eligible for small business corporation treatment 278
4. Medical expense deduction for certain lodging 279
5. Study of simplified gross income tax 281

J. Repeal of Certain Obsolete Provisions (Deadwood) 282
1. Termination of rules relating to qualified bond purchase plans and retirement bonds 282
2. Repeal of section 1251 (relating to gains from disposition of certain property used in farming) 284

Title V—Fringe Benefit Provisions 285

A. Present Law 285
B. Reasons for Change 286
C. Explanation of Provisions 288
1. Overview 288
2. No-additional-cost service 288
3. Qualified employee discount 292
4. Working condition fringe 296
5. De minimis fringe 298
6. Qualified tuition reductions 299
7. Athletic facilities 300
8. Nondiscrimination rules 300
9. Other rules 302

Page
10. Cafeteria plans 303
11. Treasury Regulations 303
D. Effective Date 304
E. Revenue Effect 305

Title VI—Technical Corrections 306

A. Technical Corrections to the Tax Provisions of the Tax Equity and Fiscal Responsibility Act of 1982 306
1. Alternative minimum tax 306
2. Casualty loss deduction 307
3. Corporate minimum tax 307
4. Investment tax credit basis adjustment 308
5. Construction period interest and taxes 308
6. Leasing 308
7. Foreign taxation 310
8. Partial liquidations 311
9. Distributions of appreciated property in redemption of stock 311
10. Treatment of certain stock purchases 312
11. Treatment of certain holding companies 318
12. Completed contract method of accounting 322
13. Limitations on benefits and contributions under qualified plans 322
14. Loans to plan participants 323
15. Repeal of special qualification requirements. 324
16. Repeal of special limitations on deduction for self-employed individuals and subchapter S corporations 325
17. Allowance of exclusion of death benefit for self-employed individuals 326
18. Special rules for top-heavy plans 327
19. Required distributions for qualified plans 328
20. Required distributions in case of individual retirement 330
21. Existing personal service corporations liquidating in 1983 or 1984 330
22. Nondiscriminatory coordination of defined contribution plans with OASDI 331
23. Profit-sharing plan contributions on behalf of disabled employees 331
24. Attorney's fees 331
25. Withholding on pensions, annuities, and certain other deferred income 332
26. Partnership audit 332
27. Clerical amendments 333
B. Technical Corrections to the Subchapter S Revision Act of 1982 334
1. Corporate liquidations, etc. 334
2. Treatment of discharge of indebtedness 334
3. Treatment of inactive subsidiaries 335
4. Treatment of worthless debt 335
5. Investment tax credit recapture 335

Page
6. Qualified subchapter S trusts 336
7. Accounting treatment where election terminates 336
8. Passive income rules for 1982 337
9. Attribution 337
10. Certain short taxable years 337
11. Taxable years of existing S corporations 338
12. Clerical amendments 338
C. Technical Corrections to Miscellaneous Provisions 339
1. Tax preference for low-income housing 339
2. Foreign currency contracts 339
3. Effective date of corporation acquisition provision 339
4. Coordination of certain amendments made by the Highway Revenue Act of 1982 and Public Law 97-473 340
5. Campaign committees 340
D. Technical Corrections to the Highway Revenue Act of 1982 342
1. Application of retail truck and trailer excise tax to vehicles including used parts 342
2. Application of gasoline excise tax to gasohol. 342
3. Certain chain operators of retail gasoline stations treated as producers 342
4. Floor stocks refunds for tax-reduced tires 343
5. Collection of excise tax on noncommercial aviation gasoline 343
6. Floor stocks refunds for retread tires 344
7. Other technical and conforming changes 344
E. Technical Corrections to the Social Security Amendments of 1983 and related legislation 345
1. Foreign work test: Withholding from auxiliary on account of work performed by a retired worker 345
2. FICA treatment of employer pickup of employee contributions under State and local retirement plans 345
3. Social Security coverage of Federal workers. 346
4. Basis for calculation of alternate annual cost-of-living adjustments 346
5. Benefits of persons receiving pensions from noncovered employment 347
6. Gender-based distinction concerning entitlement of divorced husbands 348
7. Financing of noncontributory military wage credits 348
8. Effective date for elimination concerning divorced husbands 349
9. Effective date for treatment of certain deferred remuneration 349
10. Codification of the Rowan decision 350

Page

11. Exclusion from coverage of foreign agricultural workers under the Agricultural Act of 1949 351
12. Gender-based distinction concerning the penalty for fraud 352
13. Treatment of social security benefits in computing credit for the elderly and disabled 352
14. Peer review organizations 353
15. Medicare prospective payment 353
16. Normalizing credit of medicare taxes to the Hospital Insurance Trust Fund 354
17. Effective dates relating to certain medicare changes 354
18. Enrollment and premium penalty with respect to working aged provision 355
19. Miscellaneous corrections 356

F. Effective Dates 356

G. Revenue Effect 356

Title VII—Tax Exempt Bond Provisions 357

A. Mortgage Subsidy Bonds and Credit Certificates 357
1. Extension of authority to issue qualified mortgage bonds 361
2. Mortgage credit certificates 362
3. Limited equity cooperatives 366

B. Industrial Development Bonds 367
1. Volume limitation on IDBs and student loan bonds 377
2. Denial of tax exemption for obligations issued with a Federal guarantee 380
3. Other limitations on use of IDBs 381
    - a. Restrictions on use of small issue IDBs where beneficiary had significant IDB use 381
    - b. Restrictions on use of small issue IDBs for purchase of land or existing facilities 381
    - c. Denial of tax-exempt IDB financing for certain facilities 381
    - d. Extension of Internal Revenue Code rules to certain obligations 381
    - e. Restrictions on cost recovery deductions for property financed with IDBs 382
    - f. Application of small issue IDBs to entire project 382
    - g. Extension of substantial use rule to all partners 383
    - h. Extension of mortgage subsidy bond arbitrage rules to IDBs and student loan bonds 383
    - i. Clarification that residential rental property may be in a mixed use structure 383

Page

- j. Increase in amount of capital expenditures not taken into account where there is an urban development action grant 383
- k. Public approval requirement in case of certain airport facilities 384
- C. Tax-Exempt Status of Certain Educational Organizations 387

Title VIII—Miscellaneous Revenue Matters 389

- A. Capital Gain Treatment for Portion of Gain on Sale of Condominium Units Converted from Existing Structures 389
- B. No Gain Recognized from Net Gifts Made Before March 31, 1981 395
- C. Disaster Loss Deduction Where Taxpayer Ordered to Demolish or Relocate Residence in Disaster Area Because of Disaster 397
- D. Foreign Investment Companies 401
- E. Application of Cash or Deferred Arrangement Rules to Pre-ERISA Money Purchase Plans 408

Title IX—Social Security Disability Benefits/SSI 410

- A. Purpose and Scope 410
- B. Explanation of Provisions 412
  - 1. Standards of disability 412
    - a. Overview 412
    - b. Standard of review for terminations of disability benefits 415
    - c. Study concerning evaluation of pain 419
    - d. Multiple impairments 420
  - 2. Disability determination process 421
    - a. Moratorium on mental impairment reviews 421
    - b. Face-to-face hearings in State disability determination agencies 422
    - c. Payment of benefits during appeal 423
    - d. Qualifications of medical professionals 424
    - e. Regulatory standards for consultative examinations 425
  - 3. Miscellaneous provisions 426
    - a. Uniform standards for disability determinations 426
    - b. SSA compliance with certain Federal court decisions 428
    - c. Payment from trust funds for costs of rehabilitation services 432
    - d. Advisory Council on Medical Aspects of Disability 433
    - e. Qualifying experience for appointment of certain staff attorneys to administrative law judge positions 434
  - 4. SSI provisions 435

a. Extension of the section 1619 program for the SSI disabled who perform substantial gainful activities despite severe medical impairment ..... Page 435
b. SSI disability program work evaluation and rehabilitation study 438
c. SSI conforming amendments 443
5. Effective date 443

Title X—Medicare Budget Reconciliation Amendments 444

A. Payment and Coverage-Related Changes 444
1. Payment for outpatient diagnostic laboratory 444
2. Part B premiums 445
3. Coverage of administration of hepatitis B vaccine 446
4. Pacemaker reimbursement review and reform 447
5. Payment for debridement of mycotic toenails 448
6. Payment for costs of hospital-based mobile intensive care units 449
7. Payments for physicians' furnished to hospital inpatients 450
B. Miscellaneous Administrative Changes 453
1. Presidential appointment of and pay level for the administrator of the Health Care Financing Administration 453
2. Permitting limited provider representation on peer review organizations 453
3. Access to home health services 454
4. Repeal of special tuberculosis treatment requirements 455
5. Indirect payment of supplementary medical insurance benefits 455
6. Including podiatrists in definition of 'physician' for outpatient physical therapy services and including podiatrists and dentists in definition of 'physician' for outpatient ambulatory surgery 455
7. Establishment by physical therapists of plans for physical therapy 456
8. Access to records of subcontractors 457
9. Medicare recovery against certain third parties 457
10. Use of accrediting organizations for certain entities furnishing services 458
11. Confidentiality of accreditation surveys 458
12. Thirty-day coverage for services furnished by a home health agency whose agreement has been terminated 458

Page

13. Termination of agreements with instit and entities where owners or certain other individuals have been convicted of certain offenses 458
14. Elimination of health insurance benefits advisory council 458
15. Open enrollment periods for health maintenance organizations and competitive medical plans 460
16. Deadline for report on including payment for physicians' services to hospital inpatients in DRG payment amounts 461
17. Flexible sanctions for noncompliance with requirements for end-stage renal disease facilities 461
18. Removing costs of nurse anesthetists from DRG-based payments 461
19. Determination of hospital area wage index 465
20. Definition of bona fide emergency services for purposes of limitations on payment for hospital outpatient services 465
21. Delay of effective date for single-rate for skilled nursing facilities 465

Title XI—Trade Adjustment Assistance Programs 467

A. Limitations on Trade Readjustment Allowance. 467
B. Job Search and Relocation Allowance 467
C. Assistance to Industry 468

VI. BUDGET EFFECTS AND VOTE OF THE COMMITTEE 470

A. Committee estimates 470
B. Cost Estimate Prepared by CBO 471
C. Administration Estimate of Financial Impact of Title IX 479
D. Vote of the Committee 484

VII. OTHER MATTERS TO BE DISCUSSED UNDER HOUSE RULES. 485

VIII. CHANGES IN EXISTING LAW MADE BY THE BILL AS REPORTED 489

IX. SUPPLEMENTAL, ADDITIONAL, AND ADDITIONAL SUPPLEMENTAL VIEWS 1297

VIII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

Internal Revenue Code of 1954

* * * * * * *

Subtitle A—Income Taxes

Chapter 1. Normal taxes and surtaxes.
Chapter 2. Tax on self-employed income.
Chapter 3. Withholding of tax on nonresident aliens and foreign corporations [and tax-free covenent bonds].
Chapter 4. Rules applicable to recovery of excessive profits on government contracts.
Chapter 5. Tax on transfers to avoid income tax.
Chapter 6. Consolidated returns.

CHAPTER 1—NORMAL TAXES AND SURTAXES

* * * * * * *

Subchapter A—Determination of Tax Liability

* * * * * * *

PART I—TAX ON INDIVIDUALS

* * * * * * *

SEC. 2. DEFINITIONS AND SPECIAL RULES.

(a) DEFINITION OF SURVIVING SPOUSE.—

(1) IN GENERAL.—For purposes of section 1, the term "surviving spouse" means a taxpayer—

(A) whose spouse died during either of his two taxable years immediately preceding the taxable year, and

(B) who maintains as his home a household which constitutes for the taxable year the principal place of abode (as a member of such household) of a dependent (i) who (within the meaning of section 152) is a son, stepson, daughter, or stepdaughter of the taxpayer, and (ii) with respect to whom the taxpayer is entitled to a deduction for the taxable year under section 151.

For purposes of this paragraph, an individual shall be considered as maintaining a household only if over half of the cost of maintaining the household during the taxable year is furnished by such individual.

(2) LIMITATIONS.—Notwithstanding paragraph (1), for purposes of section 1 a taxpayer shall not be considered to be a surviving spouse—

(A) if the taxpayer has remarried at any time before the close of the taxable year, or

(B) unless, for the taxpayer's taxable year during which his spouse died, a joint return could have been made under the provisions of section 6013 (without regard to subsection (a)(3) thereof).

(3) SPECIAL RULE WHERE DECEASED SPOUSE WAS IN MISSING STATUS.—If an individual was in a missing status (within the meaning of sectoin 6013(f)(3)) as a result of service in a combat zone (as determined for purposes of section 112) and if such individual remains in such status until the date referred to in subparagraph (A) or (B), then, for purposes of paragraph (1)(A), the date on which such individual died shall be treated as the earlier of the date determined under subparagraph (A) or the date determined under subparagraph (B):

(A) the date on which the determination is made under section 556 of title 37 of the United States Code or under section 5566 of title 5 of such Code (whichever is applicable) that such individual died while in such missing status, or

(B) the date which is—

(i) December 31, 1982, in the case of service in the combat zone designated for purposes of the Vietnam conflict, or

(ii) 2 years after the date designated under section 112 as the date of termination of combatant activities in that zone, in the case of any combat zone other than that referred to in clause (i).

(b) DEFINITION OF HEAD OF HOUSEHOLD.—

(1) IN GENERAL.—For purposes of this subtitle, an individual shall be considered a head of a household in, and only if, such individual is not married at the close of his taxable year, is not a surviving spouse (as defined in subsection (a)), and either—

(A) maintains as his home a household which constitutes for *more than one-half of* such taxable year the principle place of abode, as a member of such household, of—

(i) a son, stepson, daughter, or stepdaughter of the taxpayer, or a descendant of a son or daughter of the taxpayer, but is such son, stepson, daughter, stepdaughter, or descendant is married at the close of the taxpayer's taxable year, only if the taxpayer is entitled to a deduction for the taxable year for such person under section 151 *(or would be so entitled but for paragraph (2) or (4) of section 152(e)),* or

(ii) any other person who is a dependent of the taxpayer, if the taxpayer is entitled to a deduction for the taxable year for such person under section 151, or

(B) maintains a household which constitutes for such taxable year the principal place of abode of the father or mother of the taxpayer, if the taxpayer is entitled to a deduction for the taxable year for such father or mother under section 151.

For purposes of this paragraph, an individual shall be considered as maintaining a household only if over half of the cost of maintaining the household during the taxable year is furnished by such individual.

(2) DETERMINATION OF STATUS.—For purposes of this subsection—

(A) a legally adopted child of a person be considered a child of such person by blood;

(B) an individual who is legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married;

(C) a taxpayer shall be considered as not married at the close of his taxable year if at any time during the taxable year his spouse is a nonresident alien; and

(D) a taxpayer shall be considered as married at the close of his taxable year if his spouse (other than a spouse described in subparagraph (C)) died during the taxable year.

(3) LIMITATIONS.—Notwithstanding paragraph (1), for purposes of this subtitle a taxpayer shall not be considered to be a head of a household—

(A) if at any time during the taxable year he is a nonresident alien; or

(B) by reason of an individual who would not be a dependent for the taxable year but for—

(i) paragraph (9) of section 152, or

(ii) subsection (c) of section 152.

* * * * * * *

PART II—TAX ON CORPORATIONS

* * * * * * *

SEC. 12. CROSS REFERENCES RELATING TO TAX ON CORPORATIONS.

(1) For tax on the unrelated business income of certain charitable and other corporations exempt from tax under this chapter, see section 511.

(2) For accumulated earnings tax and personal holding company tax, see parts I and II of subchapter G (sec. 531 and following).

(3) For doubling of tax on corporations of certain foreign countries, see section 891.

(4) For alternative tax in case of capital gains, see section 1201(a).

(5) For rate of withholding in case of foreign corporations, see section 1442.

[(6) for withholding of tax on tax-free covenant bonds, see section 1451.]

[(7)]*(6)* For limitation on benefits of graduated rate schedule provided in section 11(b), see section 1551.

[(8)]*(7)* For minimum tax for tax preferences, see section 56.

PART III—CHANGES IN RATES DURING A TAXABLE YEAR

Sec. [21] *15*. Effect of changes.

Sec. [21] *15*. EFFECT OF CHANGES.

(a) GENERAL RULE.—If any rate of tax imposed by this chapter changes, and if the taxable year includes the effective date of the change (unless that date is the first day of taxable year), then—

(1) tentative taxes shall be computed by applying the rate for the period before the effective date of the change, and the rate for the period on and after such date, to the taxable income for the entire taxable year; and

(2) the tax for such taxable year shall be the sum of the proportion of each tentative tax which the number of days in each period bears to the number of days in the entire taxable year.

(b) REPEAL OF TAX.—For purposes of subsection (a)—

(1) if a tax is repealed, the repeal shall be considered a change of rate; and

(2) the rate of the period after the repeal shall be zero.

(c) EFFECTIVE DATE OF CHANGE.—For purposes of subsections (a) and (b)—

(1) if the rate changes for taxable years "beginning after" or "ending after" a certain date, the following day shall be considered the effective date of the change; and

(2) if a rate changes for taxable years "beginning on or after" a certain date, that date shall be considered the effective date of the change.

(d) SECTION NOT TO APPLY TO SECTION 1 RATE CHANGES MADE BY ECONOMIC RECOVERY TAX ACT OF 1981.—This section shall not apply to any change in rates under section 1 attributable to the amendments made by section 101 of the Economic Recovery Tax Act of 1981 or subsection (f) of section 1 (relating to adjustments in tax tables so that inflation will not result in tax increases).

* * * * * * *

PART IV—CREDITS AGAINST TAX

[Subpart A. Credits allowable.
[Subpart B. Rules for computing credit for investment in certain depreciable property.
[Subpart C. Rules for computing credit for expenses of work incentive programs.
[Subpart D. Rules for computing credit for employment of certain new employees.]
Subpart A. Nonrefundable personal credits.
Subpart B. Foreign tax credits, etc.
Subpart C. Refundable credits.
Subpart D. Business-related credits.
Subpart E. Rules for computing credit for investment in certain depreciable property.
Subpart F. Rules for computing credit for employment of certain new employees.

[Subpart A—Credits Allowable

[Sec. 31. Tax withheld on wages, interest, dividends, and patronage dividends.
[Sec. 32. Tax withheld at scurce on nonresident aliens and foreign corporations and on tax-free covenant bonds.
[Sec. 33. Taxes of foreign countries and possessions of the United States; possession tax credit.
[Sec. 37. Credit for the elderly and the permanently and totally disabled.
[Sec. 38. Investment in certain depreciable property.
[Sec. 39. Certain uses of gasoline and special fuels.
[Sec. 40. Expenses of work incentive programs.
[Sec. 41. Contributions to candidates for public office.
[Sec. 42. General tax credit.
[Sec. 43. Earned income.
[Sec. 44. Purchase of new principal residence.
[Sec. 44A. Expenses for household and dependent care services necessary for gainful employment.
[Sec. 44B. Credit for employment of certain new employees.
[Sec. 44C. Residential energy credit.
[Sec. 44D. Credit for producing fuel from a nonconventional source.
[Sec. 44E. Alcohol used as fuel.
[Sec. 44F. Credit for increasing research activities.
[Sec. 44G. Employee stock ownership credit.
[Sec. 44H. Clinical testing expenses for certain drugs for rare diseases or conditions.
[Sec. 45. Overpayments of tax.

Subpart A—Nonrefundable Personal Credits

Sec. 21. Expenses for household and dependent care services necessary for gainful employment.
Sec. 22. Credit for the elderly and the permanently and totally disabled.
Sec. 23. Residential energy credit.
Sec. 24. Contributions to candidates for public office.
Sec. 25. Interest on certain home mortgages.
Sec. 26. Limitation based on tax liability; definition of tax liability.

SEC. [44A.] *21.* EXPENSES FOR HOUSEHOLD AND DEPENDENT CARE SERVICES NECESSARY FOR GAINFUL EMPLOYMENT.

(a) Allowance of Credit.—

(1) In general.—In the case of an individual who maintains a household which includes as a member one or more qualifying individuals (ad defined in subsection [(c)(1)] *(b)(1)*, there shall be allowed as a credit against the tax imposed by this chaper for the taxable year an amount equal to the applicable percentage of the employment-related expenses (as defined in subsection [(c)(2)] *(b)(2)* paid by such individual during the taxable year.

(2) Applicable percentage defined.—For purposes of paragraph (1), the term "applicable percentage" means 30 percent reduced (but not below 20 percent) by 1 percentage point for each $2,000 (or fraction thereof) by which the taxpayer's adjusted gross income for the taxable year exceeds $10,000.

[(b) Application With Other Credits.—The credit allowed by subsection (a) shall not exceed the amount of the tax imposed by this chapter for the taxable year reduced by the sum of the credits allowable under—

[(1) section 33 (relating to foreign tax credit),

[(2) section 37 (relating to credit for the elderly),

[(3) section 38 (relating to investment in certain depreciable property),

[(4) section 40 (relating to expenses of work incentive programs),

[(5) section 41 (relating to contributions to candidates for public office),

[(6) section 42 (relating to general tax credit), and

[(7) section 44 (relating to purchase of new principal residence).**]**

[(c)**]** *(b)* DEFINITIONS OF QUALIFYING INDIVIDUAL AND EMPLOYMENT-RELATED EXPENSES.—For purposes of this section—

(1) QUALIFYING INDIVIDUAL.—The term "qualifying individual" means—

(A) a dependent of the taxpayer who is under the age of 15 and with respect to whom the taxpayer is entitled to a deduction under section 151(e),

(B) a dependent of the taxpayer who is physically or mentally incapable of caring for himself, or

(C) the spouse of the taxpayer, if he is physically or mentally incapable of caring for himself.

(2) EMPLOYMENT-RELATED EXPENSES.—

(A) IN GENERAL.—The term "employment-related expenses" means amounts paid for the following expenses, but only if such expenses are incurred to enable the taxpayer to be gainfully employed for any period for which there are 1 or more qualifying individuals with respect to the taxpayer:

(i) expenses for household services, and

(ii) expenses for the care of a qualifying individual.

(B) EXCEPTION.—Employment-related expenses described in subparagraph (A) which are incurred for services outside the taxpayer's household shall be taken into account only if incurred for the care of—

(i) a qualifying individual described in paragraph (1)(A), or

(ii) a qualifying individual (not described in paragraph (1)(A)) who regularly spends at least 8 hours each day in the taxpayer's household.

(C) DEPENDENT CARE CENTERS.—Employment-related expenses described in subparagraph (A) which are incurred for services provided outside the taxpayer's household by a dependent care center (as defined in subparagraph (D)) shall be taken into account only if—

(i) such center complies with all applicable laws and regulations of a State or unit of local government, and

(ii) the requirements of subparagraph (B) are met.

(D) DEPENDENT CARE CENTER DEFINED.—For purposes of this paragraph, the term "dependent care center" means any facility which—

(i) provides care for more than six individuals (other than individuals who reside at the facility), and

(ii) receives a fee, payment, or grant for providing services for any of the individuals (regardless of whether such facility is operated for profit.)

[(d)**]** *(c)* DOLLAR LIMIT ON AMOUNT CREDITABLE.—The amount of the employment-related expenses incurred during any taxable year which may be taken into account under subsection (a) shall not exceed—

(1) $2,400 if there is 1 qualifying individual with respect to the taxpayer for such taxable year, or

(2) $4,800 if there are 2 or more qualifying individuals with respect to the taxpayer for such taxable year.

[(e)] *(d)* Earned Income Limitation.—

(1) In general.—Except as otherwise provided in this subsection, the amount of the employment-related expenses incurred during any taxable year which may be taken into account under subsection (a) shall not exceed—

(A) in the case of an individual who is not married at the close of such year, such individual's earned income for such year, or

(B) in the case of an individual who is married at the close of such year, the lesser of such individual's earned income or the earned income of his spouse for such year.

(2) Special rule for spouse who is a student or incapable of caring for himself.—In the case of a spouse who is a student or a qualified individual described in subsection [(c)(1)(C),] *(b)(1)(C),* for purposes of paragraph (1), such spouse shall be deemed for each month during which such spouse is a full-time student at an educational institution, or is such a qualifying individual, to be gainfully employed and to have earned income of not less than—

(A) $200 if subsection [(d)(1)] *(c)(1)* applies for the taxable year, or

(B) $400 if subsection [(d)(2)] *(c)(2)* applies for the taxable year.

In the case of any husband and wife, this paragraph shall apply with respect to only one spouse for any one month.

[(f)] *(e)* Special Rules.—For purposes of this section—

(1) Maintaining household.—An individual shall be treated as maintaining a household for any period only if over half the cost of maintaining the household for such period is furnished by such individual (or, if such individual is married during such period, is furnished by such individual and his spouse).

(2) Married couples must file joint return.—If the taxpayer is married at the close of the taxable year, the credit shall be allowed under subsection (a) only if the taxpayer and his spouse file a joint return for the taxable year.

(3) Marital status.—An individual legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married.

(4) Certain married individuals living apart.—If—

(A) an individual who is married and who files a separate return—

(i) maintains as his home a household which constitutes for more than one-half of the taxable year the principal place of abode of a qualifying individual, and

(ii) furnishes over half of the cost of maintaining such household during the taxable year, and

(B) during the last 6 months of such taxable year such individual's spouse is not a member of such household, such individual shall not be considered as married.

(5) SPECIAL DEPENDENCY TEST IN CASE OF DIVORCED PARENTS, ETC.—If—

[(A) a child (as defined in section 151(e)(3)) who is under the age of 15 or who is physically or mentally incapable of caring for himself receives over half of his support during the calendar year from his parents who are divorced or legally separated under a decree of divorce or separate maintenance or who are separated under a written separation agreement, and

[(B) such child is in the custody of one or both of his parents for more than one-half of the calendar year,

in the case of any taxable year beginning in such calendar year such child shall be treated as being a qualifying individual described in subparagraph (A) or (B) of subsection (c)(1), as the case may be, with respect to that parent who has custody for a longer period during such calendar year than the other parent, and shall not be treated as being a qualifying individual with respect to such other parent.]

(A) paragraph (2) or (4) of section 152(e) applies to any child with respect to any calendar year, and

(B) such child is under the the age of 15 or is physically or mentally incapable of caring for himself,

in the case of any taxable year beginning in such calendar year, such child shall be treated as a qualifying individual described in subparagraph (A) or (B) of subsection (b)(1) (whichever is appropriate) with respect to the custodial parent (within the meaning of section 152(e)(1)), and shall not be treated as a qualifying individual with respect to the noncustodial parent.

(6) PAYMENTS TO RELATED INDIVIDUALS.—No credit shall be allowed under subsection (a) for any amount paid by the taxpayer to an individual—

(A) with respect to whom, for the taxable year, a deduction under section 151(e) (relating to deduction for personal exemptions for dependents) is allowable either to the taxpayer or his spouse, or

(B) who is a child of the taxpayer (within the meaning of section 151(e)(3)) who has not attained the age of 19 at the close of the taxable year.

For purposes of this paragragh, the term "taxable year" means the taxable year of the taxpayer in which the service is performed.

(7) STUDENT.—The term "student" means an individual who during each of 5 calendar months during the taxable year is a full-time student at an educational organization.

(8) EDUCATIONAL ORGANIZATION.—The term "educational organization" means an educational organization described in section 170(b)(1)(A)(ii).

[(g)] *(f)* REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section.

SEC. [37.] 22. CREDIT FOR THE ELDERLY AND THE PERMANENTLY AND TOTALLY DISABLED.

(a) General Rule.—In the case of a qualified individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 15 percent of such individual's section [37]*22* amount for such taxable year.

(b) Qualified Individual.—For purposes of this section, the term "qualified individual" means any individual—

(1) who has attained age 65 before the close of the taxable year, or

(2) who retired on disability before the close of the taxable year and who, when he retired, was permanently and totally disabled.

(c) Section [37]*22* Amount.—For purposes of subsection (a)—

(1) In General.—An individual's section [37]*22* amount for the taxable year shall be the applicable initial amount determined under pargraph (2), reduced as provided in paragraph (3) and in subsection (d).

(2) Initial amount—

(A) In general.—Except as provided in subparagraph (B), the initial amount shall be—

(i) $5,000 in the case of a single individual, or a joint return where only one spouse is a qualified individual,

(ii) $7,500 in the case of a joint return where both spouses are qualifed individuals, or

(iii) $3,750 in the case of a married individual filing a separate return.

(B) Limitation in case of individuals who have not attained age 65.—

(i) In general.—In the case of a qualified individual who has not attained age 65 before the close of the taxable year, except as provided in clause (ii), the initial amount shall not exceed the disability income for the taxable year.

(ii) Special rules in case of joint return.—In the case of a joint return where both spouses are qualified individuals and at least one spouse has not attained age 65 before the close of the taxable year—

(I) if both spouses have not attained age 65 before the close of the taxable year, the initial amount shall not exceed the sum of such spouses' disability income, or

(II) if one spouse has attained age 65 before the close of the taxable year, the initial amount shall not exceed the sum of $5,000 plus the disability income for the taxable year of the spouse who has not attained age 65 before the close of the taxable year.

(iii) Disability income.—For purposes of this subparagraph, the term "disability income" means the aggregate amount includable in the gross income of the individual for the taxable year under section 72 or 105(a) to the extent such amount constitutes wages (or payments in lieu of wages) for the period during which the individual is absent from work on account of permanent and total disability.

(3) REDUCTION.—

(A) IN GENERAL.—The reduction under this paragraph is an amount equal to the sum of the amounts received by the individual (or, in the case of a joint return, by either spouse) as a pension or annuity or as a disability benefit—

(i) which is excluded from gross income and payable under—

(I) title II of the Social Security Act,

(II) the Railroad Retirement Act of 1974, or

(III) a law administered by the Veterans' Administration, or

(ii) which is excluded from gross income under any provision of law not contained in this title.

No reduction shall be made under clause (i)(III) for any amount described in section 104(a)(4).

(B) TREATMENT OF CERTAIN WORKMEN'S COMPENSATION BENEFITS.—For purposes of subparagraph (A), any amount treated as a social security benefit under section 86(d)(3) shall be treated as a disability benefit received under title II of the Social Security Act.

[(d) LIMITATIONS.—

[(1) ADJUSTED GROSS INCOME LIMITATIONS.—If the adjusted gross income of the taxpayer exceeds—

[(A) $7,500 in the case of a single individual,

[(B) $10,000 in the case of a joint return, or

[(C) $5,000 in the case of a married individual filing a separate return,

the section 37 amount shall be reduced by one-half of the excess of the adjusted gross income over $7,500, $10,000, or $5,000, as the case may be.

[(2) LIMITATION BASED ON AMOUNT OF TAX.—The amount of the credit allowed by this section for the taxable year shall not exceed the amount of the tax imposed by this chapter for such taxable year.]

(d) ADJUSTED GROSS INCOME LIMITATION.—If the adjusted gross income of the taxpayer exceeds—

(1) $7,500 in the case of a single individual,

(2) $10,000 in the case of a joint return, or

(3) $5,000 in the case of a married individual filing a separate return,

the section 22 amount shall be reduced by one-half of the excess of the adjusted gross income over $7,500, $10,000, or $5,000, as the case may be.

(e) DEFINITION AND SPECIAL RULES.—For purposes of this section—

(1) MARRIED COUPLE MUST FILE JOINT RETURN.—Except in the case of a husband and wife who live apart at all times during the taxable year, if the taxpayer is married at the close of the taxable year, the credit provided by this section shall be allowed only if the taxpayer and his spouse file a joint return for the taxable year.

(2) Marital status.—Marital status shall be determined under section 143.

(3) Permanent and total disability defined.—An individual is permanently and totally disabled if he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. An individual shall be not considered to be permanently and totally disabled unless he furnishes proof of the existence thereof in such form and manner, and at such times, as the Secretary may require.

(f) Nonresident Alien Ineligible for Credit.—No credit shall be allowed under this section to any nonresident alien.

SEC. [44c.] *23*. RESIDENTIAL ENERGY CREDIT.

(a) General Rule.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of—

(1) the qualified energy conservation expenditures, plus

(2) the qualified renewable energy source expenditures.

(b) Qualified Expenditures.—For purposes of subsection (a)—

(1) Energy conservation.—In the case of any dwelling unit, the qualified energy conservation expenditures are 15 percent of so much of the energy conservation expenditures made by the taxpayer during the taxable year with respect to such unit as does not exceed $2,000.

(2) Renewable energy source.—In the case of any dwelling unit, the qualified renewable energy source expenditures are 40 percent of so much of the renewable energy source expenditures made by the taxpayer during the taxable year with respect to such unit as does not exceed $10,000.

(3) Prior expenditures by taxpayer on same residence taken into account.—If for any prior year a credit was allowed to the taxpayer under this section with respect to any dwelling unit by reason of energy conservation expenditures or renewable energy source expenditures, paragraph (1) or (2) (whichever is appropriate) shall be applied for the taxable year with respect to such dwelling unit by reducing each dollar amount contained in such paragraph by the prior year expenditures taken into account under such paragraph.

(4) Minimum dollar amount.—No credit shall be allowed under this section with respect to any return for any taxable year if the amount which would (but for this paragraph) be allowed with respect to such return is less than $10.

[(5) Application with other credits.—The credit allowed by subsection (a) shall not exceed the tax imposed by this chapter for the taxable year, reduced by the sum of the credits allowable under a section of this subpart having a lower number or letter designation than this section, other than credits allowable by sections 31, 39, and 43.

[(6) Carryover of unused credit.—

[(A) In general.—If the credit allowable under subsection (a) for any taxable year exceeds the limitation imposed by paragraph (5) for such taxable year, such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such succeeding taxable year.

[(B) No CARRYOVER TO TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1987.—No amount may be carried under subparagraph (A) to any taxable year beginning after December 31, 1987.]

(5) CARRYFORWARD OF UNUSED CREDIT.—

(A) IN GENERAL.—If the credit allowable under subsection (a) for any taxable year exceeds the limitation imposed by section 26(a) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section and section 25), such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such succeeding taxable year.

(B) NO CARRYFORWARD TO TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1987.—No amount may be carried under subparagraph (A) to any taxable year beginning after December 31, 1987.

(c) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) ENERGY CONSERVATION EXPENDITURES.—The term "energy conservation expenditure" means an expenditure made on or after April 20, 1977, by the taxpayer for insulation or any other energy-conserving component (or for the orginial installation of such insulation or other component) installed in or on a dwelling unit—

(A) which is located in the United States,

(B) which is used by the taxpayer as his principal residence, and

(C) the construction of which was substantially completed before April 20, 1977.

(2) RENEWABLE ENERGY SOURCE EXPENDITURE.—

(A) IN GENERAL.—The term "renewable energy source expenditure" means an expenditure made on or after April 20, 1977, by the taxpayer for renewable energy source property installed in connection with a dwelling unit—

(i) which is located in the United States, and

(ii) which is used by the taxpayer as his principal residence.

(B) CERTAIN LABOR AND OTHER COSTS INCLUDED.—The term "renewable energy source expenditure" includes—

(i) expenditures for labor costs properly allocable to the onsite preparation, assembly, or original installation of renewable energy source property, and

(ii) expenditures for an onsite well drilled for any geothermal deposit (as defined in section 613(e)(3)), but only if the taxpayer has not elected under section 263(c) to deduct any portion of such expenditures.

(C) SWIMMING POOL, ETC., USED AS STORAGE MEDIUM.—The term "renewable energy source expenditure" does not include any expenditure properly allocable to a swimming pool used as an energy storage medium or to any other energy storage medium which has a primary function other than the function of such storage.

(D) CERTAIN SOLAR PANELS.—No solar panel installed as a roof (or portion thereof) shall fail to be treated as renewable energy source property solely because it constitutes a structural component of the dwelling on which it is installed.

(3) INSULATION.—The term "insulation" means any item—

(A) which is specifically and primarily designed to reduce when installed in or on a dwelling (or water heater) the heat loss or gain of such dwelling (or water heater),

(B) the original use of which begins with the taxpayer,

(C) which can reasonably be expected to remain in operation for at least 3 years, and

(D) which meets the performance and quality standards (if any) which—

(i) have been prescribed by the Secretary by regulations, and

(ii) are in effect at the time of the acquisition of the item.

(4) OTHER ENERGY-CONSERVING COMPONENT.—The term "other energy-conserving component" means any item (other than insulation)—

(A) which is—

(i) a furnace replacement burner designed to achieve a reduction in the amount of fuel consumed as a result of increased combustion efficiency,

(ii) a device for modifying flue openings designed to increase the efficiency of operation of the heating system,

(iii) an electrical or mechanical furnace ignition system, which replaces a gas pilot light,

(iv) a storm or thermal window or door for the exterior of the dwelling,

(v) an automatic energy-saving setback thermostat,

(vi) caulking or weatherstripping of an exterior door or window,

(vii) a meter which displays the cost of energy usage, or

(viii) an item of the kind which the Secretary specifies by regulations as increasing the energy efficiency of the dwelling.

(B) the original use of which begins with the taxpayer.

(C) which can reasonably be expected to remain in operation for at least 3 years, and

(D) which meets the performance and quality standards (if any) which—

(i) have been prescribed by the Secretary by regulations, and

(ii) are in effect at the time of the acquisition of the item.

(5) RENEWABLE ENERGY SOURCE PROPERTY.—The term "renewable energy source property" means property—

(A) which, when installed in connections with a dwelling, transmits or uses—

(i) solar energy, energy derived from the geothermal deposits (as defined in section 613(e)(3)), or any other from of renewable energy which the Secretary specified by regulations, for the purpose of heating or cooling such dwelling or providing hot water or electricity for use within such dwelling, or

(ii) wind energy for nonbusiness residential purposes,

(B) the original use of which begins with the taxpayer,

(C) which can reasonably be expected to remain in operation for at least 5 years, and

(D) which meets the performance and quality standards (if any) which—

(i) have been prescribed by the Secretary by regulations, and

(ii) are in effect at the time of the acquisition of the property.

(6) Regulations.

(A) Criteria; certification procedures.—The Secretary shall by regulations—

(i) establish the criteria which are to be used in (I) prescribing performance and quality standards under paragraphs (3), (4), and (5), or (II) specifying any item under paragraph (4)(A)(viii) or any form of renewable energy under paragraph (5)(A)(i), and

(ii) establish a procedure under which a manufacturer of an item may request the Secretary to certify that the item will be treated, for purposes of this section, as insulation, an energy-conserving component, or renewable energy source property.

(B) Consultation.—Performance and quality standards regulations and other regulations shall be prescribed by the Secretary under paragraphs (3), (4), and (5) and under this paragraph only after consultation with the Secretary of Energy, the Secretary of Housing and Urban Development, and other appropriate Federal officers.

(C) Action on requests.—

(i) In general.—The Secretary shall make a final determination with respect to any request filed under subparagraph (A)(ii) for specifying an item under paragraph (4)(A)(viii) or for specifying a form of renewable energy under paragraph (5)(A)(i) within 1 year after the filing of the requst, together with any information required to be filled with such request under subparagraph (A)(ii).

(ii) Reports.—Each month the Secretary shall publish a report of any request which has been denied during the preceding month and the reasons for the denial.

(D) Effective date.—

(i) In general.—In the case of any item or energy source specified under paragraph (4)(A)(viii) or (5)(A)(i), the credit allowed by subsection (a) shall apply with respect to expenditures which are made on or after the date on which final notice of such specification is published in the Federal Register.

(ii) EXPENDITURES TAKEN INTO ACCOUNT IF FOLLOWING TAXABLE YEARS.—The Secretary may prescribe by regulations that expenditures made on or after the date referred to in clause (i) and before the close of the taxable year in which such date occurs shall be taken into account in the following taxable year.

(7) WHEN EXPENDITURES MADE; AMOUNT OF EXPENDITURES.—

(A) IN GENERAL.—Except as provided in subparagraph (B), expenditure with respect to an item shall be treated as made when original installation of the item is completed.

(B) RENEWABLE ENERGY SOURCE EXPENDITURES.—In the case of renewable energy source expenditures in connection with the construction or reconstruction of a dwelling, such expenditures shall be treated as made when the original use of the constructed or reconstructed dwelling by the taxpayer begins.

(C) AMOUNT.—The amount of any expenditure shall be the cost thereof.

(D) ALLOCATION IN CERTAIN CASES.—If less than 80 percent of the use of an item is for nonbusiness residential purposes, only that portion of the expenditures for such item which is properly allocable to use for nonbusiness residential purposes shall be taken into account. For purposes of this subparagraph, use for a swimming pool shall be treated as use which is not for residential purposes.

(8) PRINCIPAL RESIDENCE.—The determination of whether or not a dwelling unit is a taxpayer's principal residence shall be made under principles similar to those applicable to section 1034, except that—

(A) no ownership requirement shall be imposed, and

(B) the period for which a dwelling is treated as the principal residence of the taxpayer shall include the 30-day period ending on the first day on which it would (but for this subparagraph) be treated as his princial residence.

(9) LIMITATIONS ON SECRETARIAL AUTHORITY.—

(A) IN GENERAL.—The Secretary shall not specify any item under paragraph (4)(A)(viii) or any form of renewable energy under paragraph (5)(A)(i) unless the Secretary determines that—

(i) there will be a reduction in oil or natural gas consumption as a result of such specification, and such reduction is sufficient to justify any resulting decrease in Federal revenues,

(ii) such specification will not result in an increased use of any item which is known to be, or reasonably suspected to be, environmentally hazardous or a threat to public health or safety, and

(iii) available Federal subsidies do not make such specification unnecessary or inappropriate (in the light of the most advantageous allocation of economic resources).

(B) Factors taken into account.—In making any determination under subparagraph (A)(i), the Secretary (after consultation with the Secretary of Energy)—

(i) shall make an estimate of the amount by which the specification will reduce oil and natural gas consumption, and

(ii) shall determine whether such specification compares favorably, on the basis of the reduction in oil and natural gas consumption per dollar of cost to the Federal Government (including revenue loss), with other Federal programs in existence or being proposed.

(C) Factors taken into account in making estimates.—In making any estimate under subparagraph (B)(i), the Secretary shall take into account (among other factors)—

(i) the extent to which the use of any item will be increased as a result of the specification,

(ii) whether sufficient capacity is available to increase production to meet any increase in demand caused by such specification,

(iii) the amount of oil and natural gas used directly or indirectly in the manufacture of such item and other items necessary for its use, and

(iv) the estimated useful life of such item.

(10) Property financed by subsidized energy financing.—

(A) Reduction of qualified expenditures.—For purposes of determining the amount of energy conservation or renewable energy source expenditures made by any individual with respect to any dwelling unit, there shall not be taken into account expenditures which are made from subsidized energy financing.

(B) Dollar limits reduced.—Paragraph (1) or (2) of subsection (b) (whichever is appropriate) shall be applied with respect to such dwelling unit for any taxable year of such taxpayer by reducing each dollar amount contained in such paragraph (reduced as provided in subsection (b)(3)) by an amount equal to the sum of—

(i) the amount of the expenditures which were made by the taxpayer during such taxable year or any prior taxable year with respect to such dwelling unit and which were not taken into account by reason of subparagraph (A), and

(ii) the amount of any Federal, State, or local grant received by the taxpayer during such taxable year or any prior taxable year which was used to make energy conservation or renewable energy source expenditures with respect to the dwelling unit and which was not included in the gross income of such taxpayer.

(C) Subsidized energy financing.—For purposes of subparagraph (A), the term "subsidized energy financing" means financing provided under a Federal, State, or local program a principal purpose of which is to provide subsidized financing for projects designed to conserve or produce energy.

(d) SPECIAL RULES.—For purposes of this section—

(1) DOLLAR AMOUNTS IN CASE OF JOINT OCCUPANCY.—In the case of any dwelling unit which is jointly occupied and used during any calendar year as a principal residency by 2 or more individuals—

(A) the amount of the credit allowable under subsection (a) by reason of energy conservation expenditures or by reason of renewable energy source expenditures (as the case may be) made during such calendar year by any of such individuals with respect to such dwelling unit shall be determined by treating all of such individuals as one taxpayer whose taxable year is such calendar year; and

(B) there shall be allowable with respect to such expenditures to each of such individuals, a credit under subsection (a) for the taxable year in which such calendar year ends in an amount which bears the same ratio to the amount determined under subparagraph (A) as the amount of such expenditures made by such individual during such calendar year bears to the aggregate of such expenditures made by all of such individuals during such calendar year.

(2) TENANT-STOCKHOLDER IN COOPERATIVE HOUSING CORPORATION.—In the case of an individual who is a tenant-stockholder (as defined in section 216) in a cooperative housing corporation (as defined in such section), such individual shall be treated as having made his tenant-stockholder's proportionate share (as defined in section 216(b)(3)) of any expenditures of such corporation.

(3) CONDOMINIUMS—

(A) IN GENERAL.—In the case of an individual who is a member of a condominium management asssociation with respect to a condominium which he owns, such individual shall be treated as having made his proportionate share of any expenditures of such association.

(B) CONDOMINIUM MANAGEMENT ASSOCIATION.—For purposes of this paragraph, the term "condominium management association" means an organization which meets the requirements of paragraph (1) of section 528(c) (other than subparagraph (E) thereof) with respect to a condominium project substantially all of the units of which are used as residences.

(4) JOINT OWNERSHIP OF ENERGY ITEMS.—

(A) IN GENERAL.—Any expenditure otherwise qualifying as an energy conservation expenditure or a renewable energy source expenditure shall not be treated as failing to so qualify merely because such expenditure was made with respect to 2 or more dwelling units.

(B) LIMITS APPLIED SEPARATELY.—In the case of any expenditure described in subparagraph (A), the amount of the credit allowable under subsection (a) shall (subject to paragraph (1)) be computed separately with respect to the amount of the expenditure made by each individual.

(5) 1977 expenditures allowed for 1978—

(A) No credit for taxable years beginning before 1978.—No credit shall be allowed under this section for any taxable year beginning before January 1, 1978.

(B) 1977 expenditures allowed for 1978.—In the case of the taxpayer's first taxable year beginning after December 31, 1977, this section shall be applied by taking into account the period beginning April 20, 1977, and ending on the last day of such first taxable year.

(e) Basis Adjustments.—For purposes of this subtitle, if a credit is allowed under this section for any expenditure with respect to any property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so allowed.

(f) Termination.—This section shall not apply to expenditures made after December 31, 1985.

SEC. [41]*24*. CONTRIBUTIONS TO CANDIDATES FOR PUBLIC OFFICE.

(a) General Rule.—In the case of an individual, there shall be allowed, subject to the limitations of subsection (b), as a credit against the tax imposed by this chapter for the taxable year, an amount equal to one-half of all political contributions and all newsletter fund contributions, payment of which is made by the taxpayer within the taxable year.

(b) Limitations.—

(1) Maximum credit.—The credit allowed by subsection (a) for a taxable year shall not exceed $50 ($100 in the case of a joint return under section 6013).

[(2) Application with other credits.—The credit allowed by subsection (a) shall not exceed the amount of the tax imposed by this chapter for the taxable year reduced by the sum of the credits allowable under section 33 (relating to foreign tax credit), section 37 (relating to credit for the elderly), and section 38 (relating to investment in certain depreciable property).]

[(3)] *(2)* Verification.—The credit allowed by subsection (a) shall be allowed, with respect to any political contribution or newsletter fund contribution, only if such contribution is verified in such manner as the Secretary shall prescribe by regulations.

(c) Definitions.—For purposes of this section—

(1) Political contribution.—The term "political contribution" means a contribution or gift of money to—

(A) an individual who is a candidate for nomination or election to any Federal, State, or local elective public office in any primary, general, or special election, for use by such individual to further his candidacy for nomination or election to such office;

(B) any committee, association, or organization (whether or not incorporated) organized and operated exclusively for the purpose of influencing, or attempting to influence, the nomination or election of one or more individuals who are candidates for nomination or election to any Federal, State, or local elective public office, for use by such committee, association, or organization to futher the candidacy of such individual or individuals for nomination or election to such office;

(C) the national committee of a national political party;

(D) the State committee of a national political party as designated by the national committee of such party; or

(E) a local committee of a national political party as designated by the State committee of such party designated under subparagraph (D).

(2) CANDIDATE.—The term "candidate" means, with respect to any Federal, State, or local elective public office, an individual who—

(A) publicly announces before the close of the calendar year following the calendar year in which the contribution or gift is made that he is a candidate for nomination or election to such office; and

(B) meets the qualifications prescribed by law to hold such office.

(3) NATIONAL POLITICAL PARTY.—The term "national political party" means—

(A) in the case of contributions made during a taxable year of the taxpayer in which the electors of President and Vice President are chosen, a political party presenting candidates or electors for such offices on the official election ballot of ten or more States, or

(B) in the case of contributions made during any other taxable year of the taxpayer, a political party which met the qualifications described in subparagraph (A), in the last preceding election of a President and Vice President.

(4) STATE AND LOCAL.—The term "State" means the various States and the District of Columbia; and the term "local" means a political subdivision or part thereof, of two or more political subdivisions or parts thereof, of a State.

(5) NEWSLETTER FUND CONTRIBUTION.—The term "newsletter fund contribution" means a contribution or gift of money to a fund established and maintained by an individual who holds, has been elected to, or is a candidate for nomination or election to, any Federal, State, or local elective public office for use by such individual exclusively for the preparation and circulation of a newsletter.

(d) CROSS REFERENCES.—

(1) For disallowances of credits to estates and trusts, see section 642(a)(2).

(2) For treatment of Inidan tribal governments as States (and the political subdivision of Indian tribal governments as political subdivisions of States), see section 7871.

SEC. 25. INTEREST ON CERTAIN HOME MORTGAGES.

(a) ALLOWANCE OF CREDIT.—There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the product of—

(1) the certificate credit rate, and

(2) the interest paid or incurred by the taxpayer during the taxable year on the remaining principal of the certified indebtedness amount.

(b) CERTIFICATE CREDIT RATE; CERTIFIED INDEBTEDNESS AMOUNT.—For purposes of this section—

(1) CERTIFICATE CREDIT RATE.—The term "certificate credit rate" means the rate of the credit allowable by this section which is specified in the mortgage credit certificate.

(2) CERTIFIED INDEBTEDNESS AMOUNT.—the term "certified indebtedness amount" means the amount of indebtedness which is—

(A) incurred by the taxpayer—

(i) to acquire the principal residence of the taxpayer,

(ii) as a qualified home improvement loan (as defined in section 103A(l)(6)) with respect to such residence, or

(iii) as a qualified rehabilitation loan (as defined in section 103A(l)(7)) with respect to such residence, and

(B) specified in the mortgage credit certificate.

(c) MORTGAGE CREDIT CERTIFICATE; QUALIFIED MORTGAGE CREDIT CERTIFICATE PROGRAM.—For purposes of this section—

(1) MORTGAGE CREDIT CERTIFICATE.—The term "mortgage credit certificate" means any certificate which—

(A) is issued under a qualified mortgage credit certificate program by the State or political subdivision having the authority to issue a qualified mortgage bond to provide financing on the principal residence of the taxpayer,

(B) is issued to the taxpayer in connection with the acquisition, qualified rehabilitation, or qualified home improvement of the taxpayer's principal residence,

(C) specifies—

(i) the certificate credit rate, and

(ii) the certified indebtedness amount, and

(D) is in such form as the Secretary may prescribe.

(2) QUALIFIED MORTGAGE CREDIT CERTIFICATE PROGRAM.—

(A) IN GENERAL.—The term "qualified mortgage credit certificate program" means any program—

(i) which is established by a State or political subdivision thereof for any calendar year for which it is authorized to issue qualified mortgage bonds,

(ii) under which the issuing authority elects (in such manner and form as the Secretary may prescribe) not to issue an amount of qualified mortgage bonds which it may otherwise issue during such calendar year under section 103A,

(iii) under which the indebtedness certified by mortgage credit certificates meets the requirements of the following subsections of section 103A (as modified by subparagraph (B) of this paragraph):

(I) subsection (d) (relating to residence requirements),

(II) subsection (e) (relating to 3-year requirement),

(III) subsection (f) (relating to purchase price requirement),

(IV) subsection (h) (relating to portion of loans required to be placed in targeted areas), and

(V) paragraphs (1) and (2) of subsection (j) (relating to other requirements),

(iv) under which no mortgage credit certificate may be issued with respect to any residence any of the financing of which is provided from the proceeds of a qualified mortgage bond,

(v) which is not limited to indebtedness incurred from particular lenders, and

(vi) if the issuing authority allocates a block of mortgage credit certificates for use in connection with a particular development, which requires the developer to furnish to the issuing authority and the homebuyer a certificate that the price for the residence is no higher than it would be without the use of a mortgage credit certificate.

(B) Modifications of section 103A.—Under regulations prescribed by the Secretary, in applying section 103A for purposes of subparagraph (A)(iii)—

(i) each qualified mortgage certificate credit program shall be treated as a separate issue,

(ii) the product determined by multiplying—

(I) the certified indebtedness amount of each mortgage credit certificate issued under such program, by

(II) the certificate credit rate specified in such certificate,

shall be treated as proceeds of such issue and the sum of such products shall be treated as the total proceeds of such issue, and

(iii) paragraph (1) of section 103A(e) shall be applied by substituting "100 percent" for "90-percent or more". Clause (iii) shall not apply if the issuing authority submits a plan to the Secretary for administering the 90 percent requirement of section 103A(e)(1) and the Secretary is satisfied that such requirement will be met under such plan.

(d) Determination of Certificate Credit Rate.—For purposes of this section—

(1) In general.—The certificate credit rate specified in any mortgage credit certificate shall not be less than 10 percent or more than 50 percent.

(2) Aggregate limit on certificate credit rates.—

(A) In general.—In the case of each qualified mortgage credit certificate program, the sum of the products determined by multiplying—

(i) the certified indebtedness amount of each mortgage credit certificate issued under such program, by

(ii) the certificate credit rate with respect to such certificate,

shall not exceed 15 percent of the nonissued bond amount.

(B) Nonissued bond amount.—For purposes of subparagraph (A), the term "nonissued bond amount" means, with respect to any qualifed mortgage credit certificate program,

the amount of qualified mortgage bonds which the issuing authority is otherwise authorized to issue and elects not to issue under subsection (c)(2)(A)(ii).

(C) AGGREGATE OF NONISSUED BOND AMOUNTS CANNOT EXCEED 9 PERCENT OF MORTGAGES EXECUTED.—The aggregate amount of qualified mortgage bonds which may be elected under subsection (c)(2)(A)(ii) for any calendar year by issuing authorities in any State shall not exceed the limit determined under clause (i) of section 103A(g)(4)(A) for such State for such calendar year.

(e) SPECIAL RULES AND DEFINITIONS.—For purposes of this section—

(1) CARRYFORWARD OF UNUSED CREDIT.—In the case of any taxpayer, if the credit allowable under subsection (a) for any taxable year exceeds the limitation imposed by section 26(a) for such year reduced by the sum of the credits allowable under this subpart (other than this section) such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such succeeding taxable year.

(2) INDEBTEDNESS NOT TREATED AS CERTIFIED WHERE CERTAIN REQUIREMENTS NOT IN FACT MET.—Indebtedness shall not be taken into account under subsection (a)(2) if the requirements of subsection (d)(1), (e), (f), and (j) of section 103A were not in fact met with respect to such indebtedness.

(3) PERIOD FOR WHICH CERTIFICATE IN EFFECT.—

(A) IN GENERAL.—Except as provided in subparagraph (B), a mortgage credit certificate shall be treated as in effect with respect to interest attributable to the period—

(i) beginning on the date such certificate is issued, and

(ii) ending on the earlier of the date on which—

(I) the certificate is revoked by the issuing authority, or

(II) the residence to which such certificate relates ceases to be the principal residence of the individual to whom the certificate relates.

(B) CERTIFICATE INVALID UNLESS INDEBTEDNESS INCURRED WITHIN CERTAIN PERIOD.—A certificate shall not apply to any indebtedness which is incurred after the close of the calendar year following the calendar year for which the issuing authority made the applicable election under subsection (c)(2)(A)(ii).

(C) NOTICE TO SECRETARY WHEN CERTIFICATE REVOKED.—Any issuing authority which revokes any mortgage credit certificate shall notify the Secretary of such revocation at such time and in such manner as the Secretary shall prescribe by regulations.

(4) SPECIAL RULES WHERE MORTGAGE IS ASSUMED.—In the case of a mortgage with respect to which a mortgage credit certificate was issued and which is assumed by a taxpayer—

(A) the credit certificate rate under such certificate shall not be taken into account under this section to the extent it exceeds 25 percent, and

(B) such certificate shall be treated as issued to such taxpayer.

(5) CERTAIN REFINANCING PERMITTED.—In applying subsection (c)(2)(A)iii), the requirements of section 103A(j)(1) shall be treated as met if a mortgage credit certificate is issued with respect to a mortgage which is used to replace an existing mortgage for which such a certificate has already been issued if, under regulations prescribed by the Secretary, such replacement mortgage does not extend the term, alter the amortization schedule, or increase the principal amount, of the original mortgage.

(6) PUBLIC NOTICE THAT CERTIFICATES WILL BE ISSUED.—At least 90 days before any mortgage credit certificate is to be issued under a qualified mortgage credit certificate program, the issuing authority shall provide reasonable public notice of—

(A) the eligibility requirements for such certificate,

(B) the methods by which such certificates are to be issued, and

(C) such other information as the Secretary may require.

(7) PRINCIPAL RESIDENCE.—The term "principal residence" has the meaning given such term by section 1034.

(8) RELATED PERSONS.—No credit shall be allowed under subsection (a) for any interest paid or accrued to a person who is a related person to the taxpayer (within the meaning of section 103(b)(6)(C)(i)).

(9) QUALIFIED REHABILITATION AND HOME IMPROVEMENT.—

(A) QUALIFIED REHABILITATION.—The term "qualified rehabilitation" has the meaning given such term by section 103A(1)(7)(B).

(B) QUALIFIED HOME IMPROVMENT.—The term "qualified home improvement" means an alteration, repair, or improvement described in section 103A(1)(6).

(10) QUALIFIED MORTGAGE BOND.—The term "qualified mortgage bond" has the meaning given such term by section103A(c)(1).

(f) REDUCTION IN AGGREGATE AMOUNT OF QUALIFIED MORTGAGE BOND WHICH MAY BE ISSUED WHERE CERTAIN REQUIREMENTS NOT MET.—

(1) IN GENERAL.—If for any calendar year and mortgage credit certificate program fails to meet the requirements of—

(A) clause (iii), (iv), (v), or (vi) of subsection (c)(2)(A), or

(B) paragraph (2) of subsection (d),

the applicable State ceiling under paragraph (4) of section 103A(g) for the State in which such program operates shall be reduced by twice the correction amount with respect to such failure. Such reduction shall be applied to such State ceiling for the calendar year following the calendar year in which the Secretary determines the correction amount with respect to such failure.

(2) CORRECTION AMOUNT.—

(A) IN GENERAL.—For purposes of paragraph (1), the term "correction amount" means, in the case of a failure to meet a requirement referred to in—

(i) paragraph (1)(A), the amount of indebtedness involved, or

(ii) paragraph (1)(B), the amount of equal to the excess credit amount divided by 0.15.

(B) EXCESS CREDIT AMOUNT.—

(i) IN GENERAL.—For purposes of subparagraph (A)(ii), the term "excess credit amount" means the excess of—

(I) the credit amount for any mortgage credit certificate program, over

(II) the amount which would have been the credit amount for such program had such program met the requirements of paragraph (2) of subsection (d).

(ii) CREDIT AMOUNT.—For purposes of clause (i), the term "credit amount" means the sum of the products determined under clauses (i) and (ii) of subsection (d)(2)(A).

(3) SPECIAL RULE FOR STATES HAVING CONSTITUTIONAL HOME RULE CITIES.—In the case of a State having one of more constitutional home rule cities (within the meaning of section 103A(g)(5)(C)) the reduction in the State ceiling by reason of paragraph (1) shall be allocated to the constitutional home rule city, or to the portion of the State not within such city, whichever caused the reduction.

(g) REPORTING REQUIREMENTS.—Each person who makes a loan which is a certified indebtedness amount under any mortgage credit certificate shall file a report with the Secretary containing—

(1) the name, address, and social security account number of the individual to which the certificate was issued,

(2) the certificate's issuer, date of issue, and certified indebtedness amount, and

(3) such other information as the Secretary may require by regulations.

Such report shall be filed at such time and in such manner as the Secretary may require by regulations.

(h) TERMINATION.—No election may be made under subsection (c)(2)(A)(ii) for any calendar year after 1988.

SEC. [25.] 26. LIMITATION BASED ON TAX LIABILITY; DEFINITION OF TAX LIABILITY.

(a) LIMITATION BASED ON AMOUNT OF TAX.—The aggregate amount of credits allowed by this subpart for the taxable year shall not exceed the taxpayer's tax liability for such taxable year.

(b) TAX LIABILITY.—For purposes of this section—

(1) IN GENERAL.—The term "tax liability" means the tax imposed by this chapter for the taxable year.

(2) EXCEPTION FOR CERTAIN TAXES.—For purposes of paragraph (1), any tax imposed by any of the following provisions shall not be treated as tax imposed by this chapter:

(A) section 56 (relating to corporate minimum tax),

(B) subsection (m)(5)(B), (o)(2), or (q) of section 72 (relating to additional tax on certain distributions),

(C) section 408(f) (relating to additional tax on income from certain retirement accounts),

(D) section 531 (relating to accumulated earnings tax),

(E) section 541 (relating to personal holding company tax),

(F) section 1351(d)(1) (relating to recoveries of foreign expropriation losses), and

(G) section 1374 (relating to tax on certain capital gains of S corporations),

(H) section 1375 (relating to tax imposed when passive investment income of corporation having subchapter C earnings and profits exceeds 25 percent of gross receipts).

(c) Similar Rule for Alternative Minimum Tax for Taxpayers Other than Corporations.—

For treatment of tax imposed by section 55 as not imposed by this chapter, see section 55(c).

Subpart B—Foreign Tax Credit, Etc.

Sec. 27. Taxes of foreign countries and possessions of the United States; possession tax credit.
Sec. 28. Clinical testing expenses for certain drugs for rare diseases or conditions.
Sec. 29. Credit for producing fuel from a nonconventional source.
Sec. 30. Credit for increasing research activities.

SEC. [33.] *27.* TAXES OF FOREIGN COUNTRIES AND POSSESSIONS OF THE UNITED STATES; POSSESSION TAX CREDIT.

(a) Foreign Tax Credit.—The amount of taxes imposed by foreign countries and possessions of the United States shall be allowed as a credit against the tax imposed by this chapter to the extent provided in section 901.

(b) Section 936 Credit.—In the case of a domestic corporation, the amount provided by section 936 (relating to Puerto Rico and possession tax credit) shall be allowed as a credit against the tax imposed by this chapter.

SEC. [44H.] *28.* CLINICAL TESTING EXPENSES FOR CERTAIN DRUGS FOR RARE DISEASES OR CONDITIONS.

(a) General Rule.—There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 50 percent of the qualified clinical testing expenses for the taxable year.

(b) Qualified Clinical Testing Expenses.—For purposes of this section—

(1) Qualified clinical testing expenses.—

(A) In general.—Except as otherwise provided in this paragraph, the term "qualified clinical testing expenses" means the amounts which are paid or incurred by the taxpayer during the taxable year which would be described in subsection (b) of section [44F] *30* if such subsection were applied with the modifications set forth in subparagraph (B).

(B) Modifications.—For purposes of subparagraph (A), subsection (b) of section [44F] *30* shall be applied—

(i) by substituting "clinical testing" for "qualified research" each place it appears in paragraphs (2) and (3) of such subsection, and

(ii) by substituting "100 percent" for "65 percent" in paragraph (3)(A) of such subsection.

(C) Exclusion for amounts funded by grants, etc.—The term "qualified clinical testing expenses" shall not include any amount to the extent such amount is funded by any grant, contract, or otherwise by another person (or any governmental entity).

(D) Special Rule.—For purposes of this paragraph, section [44F] *30* shall be deemed to remain in effect for periods after December 31, 1985.

(2) Clinical testing.—

(A) In general.—The term "clinical testing" means any human clinical testing—

(i) which is carried out under an exemption for a drug being tested for a rare disease or condition under section 505(i) of the Federal Food, Drug, and Cosmetic Act (or regulations issued under such section),

(ii) which occurs—

(I) after the date of such drug is designated under section 526 of such Act, and

(II) before the date on which an application with respect to such drug is approved under section 505(b) of such Act, and

(iii) which is conducted by or on behalf of the taxpayer to whom the designation under such section 526 applies.

(B) Testing must be related to use for rare disease or condition.—Human clinical testing shall be taken into account under subparagraph (A) only to the extent such testing is related to the use of a drug for the rare disease or condition for which it was designated under section 526 of the Federal Food, Drug, and Cosmetic Act.

(c) Coordination With Credit Increasing Research Expenditures.—

(1) In general.—Except as provided in paragraph (2), any qualified clinical testing expenses for a taxable year to which an election under this section applies shall not be taken into account for purposes of determining the credit allowable under section [44F] *30* for such taxable year.

(2) Expenses included in determining base period research expenses.—Any qualified clinical testing expenses for any taxable year which are qualified research expenses (within the meaning of section [44F(b)] *30(b)* shall be taken into account in determining base period research expenses for purposes of applying section [44F] *30* to subsequent taxable years.

(d) Definition and Special Rules.—

(1) Rare disease or condition.—For purposes of this section, the term "rare disease or condition" means any disease or condition which occurs so infrequently in the United States that there is no reasonable expectation that the cost of developing and making available in the United States a drug for such disease or condition will be recovered from sales in the United States of such drug. Determinations under the preceding sentence with respect to any drug shall be made on the basis of the facts and circumstances as of the date such drug is desig-

nated under section 526 of the Federal Food, Drug, and Cosmetic Act.

[(2) LIMITATION BASED ON AMOUNT OF TAX.—The credit allowed by this section for any taxable year shall not exceed the amount of the tax imposed by this chapter for the taxable year reduced by the sum of the credits allowable under a section of this subpart having a lower number or letter designation than this section, other than the credits allowable by sections 31, 39, and 43. For purposes of the preceeding sentence, the term "tax imposed by this chapter" shall not include any tax treated as not imposed by this chapter under the last sentence of section 53(a).]

(2) LIMITATION BASED ON AMOUNT OF TAX.—The credit allowed by this section for any taxable year shall not exceed the taxpayer's tax liability for the taxable year (as defined in section 26(b), reduced by the sum of the credits allowable under subpart A and section 28.

(3) SPECIAL LIMITATIONS ON FOREIGN TESTING.—

(A) IN GENERAL.—No credit shall be allowed under this section with respect to any clinical testing conducted outside the United States unless—

(i) such testing is conducted outside the United States because there is an insufficient testing population in the United States, and

(ii) such testing is conducted by a United States person or by any other person who is not related to the taxpayer to whom the designation under section 526 of the Federal Food, Drug, and Cosmetic Act applies.

(B) SPECIAL LIMITATION FOR CORPORATIONS TO WHICH SECTION 934(b) OR 936 APPLIES.—No credit shall be allowed under this section with respect to any clinical testing conducted by a corporation to which section 934(b) applies or to which an election under section 936 applies.

(4) CERTAIN RULES MADE APPLICABLE.—Rules similar to the rules of paragraphs (1) and (2) of section [44F(f)] *30(f)* shall apply for purposes of this section.

(5) ELECTION.—This section shall apply to any taxpayer for any taxable year only if such taxpayer elects (at such time and in such manner as the Secretary may by regulations prescribe) to have this section apply for such taxable year.

(e) TERMINATION.—This section shall not apply to any amount paid or incurred after December 31, 1987.

SEC. [44D.] *29.* CREDIT FOR PRODUCING FUEL FROM A NONCONVENTIONAL SOURCE.

(a) ALLOWANCE OF CREDIT.—There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to—

(1) $3, multiplied by

(2) the barrel-of-oil equivalent of qualified fuels—

(A) sold by the taxpayer to an unrelated person during the taxable year, and

(B) the production of which is attributable to the taxpayer.

(b) LIMITATIONS AND ADJUSTMENTS—

(1) PHASEOUT OF CREDIT—The amount of the credit allowable under subsection (a) shall be reduced by an amount which bears the same ratio to the amount of the credit (determined without regard to this paragraph) as—

(A) the amount by which the reference price for the calendar year in which the taxable year begins exceeds $23.50, bears to

(B) $6.

(2) CREDIT REDUCED FOR GRANTS, TAX-EXEMPT BONDS, AND SUBSIDIZED ENERGY FINANCING.—

(A) IN GENERAL.—The amount of the credit allowable under subsection (a) with respect to any project for any taxable year (determined after the application of paragraphs (1) and (2)) shall be reduced by the amount which is the product of the amount so determined for such year and a fraction—

(i) the numerator of which is the sum, for the taxable year and all prior taxable yeras, of—

(I) grants provided by the United States, a State, or a political subdivision of a State for use in connection with the project,

(II) proceeds of any issue of State or local government obligations used to provide financing for the project the interest on which is exempt from tax under section 103, and

(III) the aggregate amount of subsidized energy financing (within the meaning of section 48(l)(11)(G)) provided in connection with the project, and

(ii) the denominator of which is the aggregate amount of additions to the capital account for the project for the taxable year and all prior taxable years.

(B) AMOUNTS DETERMINED AT CLOSE OF YEAR.—The amounts under subparagraph (A) for any taxable year shall be determined as of the close of the taxable year.

(4) CREDIT REDUCED FOR ENERGY CREDIT.—The amount allowable as a credit under subsection (a) with respect to any project for any taxable year (determined after the application of paragraphs (1), (2), and (3)) shall be reduced by the excess of—

(A) the aggregate amount allowed under section 38 for the taxable year or any prior taxable year by reason of the energy percentage with respect to property used in the project, over

(B) the aggregate amount recaptured with respect to the amount described in subparagraph (A)—

(i) under section 47 for the taxable year or any prior taxable year, or

(ii) under this paragraph for any prior taxable year.

The amount recaptured under section 47 with respect to any property shall be appropriately reduced to take into account any reduction in the credit allowed by this section by reason of the preceding sentence.

[(5) APPLICATION WITH OTHER CREDITS.—The credit allowed by subsection (a) for a taxable year shall not exceed the tax imposed by this chapter for such taxable year, reduced by the sum of the credits allowable under a section of this subpart having a lower number or letter designation than this section, other than the credits allowable by sections 31, 39, and 43. For purposes of the preceding sentence, the term "tax imposed by this chapter" shall not include any tax treated as not imposed by this chapter under the last sentence of section 53(a).]

(5) APPLICATION WITH OTHER CREDITS.—The credit allowed by subsection (a) for a taxable year shall not exceed the taxpayer's tax liability for the taxable year (as defined in section 26(b), reduced by the sum of the credits allowable under subpart A and sections 27 and 28.

(c) DEFINITION OF QUALIFIED FUELS.—For purposes of this section—

(1) IN GENERAL.—The term "qualified fuels" means—

(A) oil produced from shale and tar sands,

(B) gas produced from—

(i) geopressured brine, Devonian shale, coal seams, or a tight formation, or (ii) biomass,

(C) liquid, gaseous, or solid synthetic fuels produced from coal (including lignite), including such fuels when used as feedstocks.

(D) qualifying processed wood fuels, and

(E) steam produced from solid agricultural byproducts (not including timber byproducts).

(2) GAS FROM GEOPRESSURED BRINE, ETC.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the determination of whether any gas is produced from geopressured brine, Devonian shale, coal seams, or a tight formation shall be made in accordance with section 503 of the Natural Gas Policy Act of 1978.

(B) SPECIAL RULES FOR GAS FROM TIGHT FORMATIONS.—The term "gas produced from a tight formation" shall only include—

(i) gas the price of which is regulated by the United States, and

(ii) gas for which the maximum lawful price applicable under the Natural Gas Policy Act of 1978 is at least 150 percent of the then applicable price under section 103 of such Act.

(3) BIOMASS.—The term "biomass" means any organic material which is an alternate substance (as defined in section 48(l)(3)(B) other than coal (including lignite) or any product of such coal.

(4) QUALIFYING PROCESSED WOOD FUEL—

(A) IN GENERAL.—The term "qualifying processed wood fuel" means any processed solid wood fuel (other than charcoal, fireplace products, or a product used for ornamental or recreational purposes) which has a Btu content per unit of volume or weight, determined without regard to any nonwood elements, which is at least 40 percent greater per unit of volume or weight than the Btu content of the wood from which it is produced (determined immediately before the processing).

(B) ELECTION.—A taxpayer shall elect, at such time and in such manner as the Secretary by regulations may prescribe, as to whether Btu content per unit shall be determined for purposes of this paragraph on a volume or weight basis. Any such election—

(i) shall apply to all production from a facility; and

(ii) shall be effective for the taxable year with respect to which it is made and for all subsequent taxable years and, once made, may be revoked only with the consent of the Secretary.

(5) AGRICULTURAL BYPRODUCT STEAM.—Steam produced from solid agricultural byproducts which is used by the taxpayer in his trade or business shall be treated as having been sold by the taxpayer to an unrelated person on the date on which it is used.

(d) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) ONLY PRODUCTION WITHIN THE UNITED STATES TAKEN INTO ACCOUNT.—Sales shall be taken into account under this section only with respect to qualified fuels the production of which is within—

(A) the United States (within the meaning of section 638(1)),

(B) a possession of the United States (within the meaning of section 638(2)).

(2) COMPUTATION OF INFLATION ADJUSTMENT FACTORS AND REFERENCE PRICE.—

(A) IN GENERAL.—The Secretary shall, not later than April 1 of each calendar year, determine and publish in the Federal Register the inflation adjustment factor and the reference price for the preceding calendar year in accordance with this paragraph.

(B) INFLATION ADJUSTMENT FACTOR.—The term "inflation adjustment factor" means, with respect to a calendar year, a fraction the numerator of which is the GNP implicit price deflator for the calendar year and the denominator of which is the GNP implicit price deflator for calendar year 1979. The term "GNP implicit price deflator" means the first revision of the implicit price deflator for the gross national product as computed and published by the Department of Commerce.

REFERENCE PRICE.—The term "reference price" means with respect to a calendar year the Secretary's estimate of the annual average wellhead price per barrel for all domestic crude oil the price of which is not subject to regulation by the United States.

(3) PRODUCTION ATTRIBUTABLE TO THE TAXPAYER.—In the case of a property or facility in which more than 1 person has an interest, except to the extent provided in regulations prescribed by the Secretary, production from the property or fa-

cility (as the case may be) shall be allocated among such persons in proportion to their respective interests in the gross sales from such property or facility.

(4) SPECIAL RULES APPLICABLE TO GAS FROM GEOPRESSURED BRINE, DEVONIAN SHALE, COAL SEAMS, OR A TIGHT FORMATION.—

(A) CREDIT ALLOWED ONLY FOR NEW PRODUCTION.—The amount of the credit allowable under subsection (a) shall be determined without regard to any production attributable to a property from which gas from Devonian shale, coal seams, geopressured brine, or a tight formation was produced in marketable quantities before Janaury 1, 1980.

(B) REFERENCE PRICE AND APPLICATION OF PHASEOUT FOR DEVONIAN SHALE.—

(i) REFERENCE PRICE FOR DEVONIAN SHALE.—For purposes of this section, the term "reference price" for gas from Devonian shale sold during calendar years 1980, 1981, and 1982 shall be the average wellhead price per thousand cubic feet for such year of high cost natural gas (as defined in section 107(c)(2), (3), and (4) of the Natural Gas Policy Act of 1978 and determined under section 503 of that Act) as estimated by the Secretary after consultation with the Federal Energy Regulatory Commission.

(ii) DIFFERENT PHASEOUT TO APPLY FOR 1980, 1981, AND 1982.—For pusposes of applying paragraphs (1) and (2) of subsection (b) with respect to sales during calendar years 1980, 1981, and 1982 of gas from Devonian shale, "$4.05" shall be substituted for "$23.50" and "$1.03" shall be substituted for $6.00."

(5) PHASEOUT DOES NOT APPLY FOR FIRST 3 YEARS OF PRODUCTION FROM FACILITY PRODUCING QUALIFYING PROCESSED WOOD OR STEAM FROM SOLID AGRICULTURAL BYPRODUCTS.—In the case of a facility for the production of—

(A) qualifying processed wood fuel, or

(B) steam from solid agricultural byproducts,

paragraph (1) of subsection (b) shall not apply with respect to the amount of the credit allowable under subsection (a) for fuels sold during the 3-year period beginning on the date the facility is placed in service.

(6) BARREL-OF-OIL EQUIVALENT.—The term "barrel-of-oil equivalent" with respect to any fuel means that amount of such fuel which has a Btu content of 5.8 million; except that in the case of qualified fuels described in subparagraph (C), (D), or (E) of subsection (c)(1), the Btu content shall be determined without regard to any material from a source not described in such subparagraph.

(7) BARREL DEFINED.—The term "barrel" means 42 United States gallons.

(8) RELATED PERSONS.—Persons shall be treated as related to each other if such persons would be treated as a single employer under the regulations prescribed under section 52(b).

(9) PASS-THRU IN THE CASE OF ESTATES AND TRUSTS.—Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

(e) APPLICATION WITH THE NATURAL GAS POLICY ACT OF 1978.—

(1) NO CREDIT IF SECTION 107 OF THE NATURAL GAS POLICY ACT OF 1978 IS UTILIZED.—Subsection (a) shall apply with respect to any natural gas described in subsection (c)(1)(B)(i) which is sold during the taxabele year only if such natural gas is sold at a lawful price which is determined without regard to the provision of section 107 of the Natural Gas Policy Act of 1978 and subtitle B of title I of such Act.

(2) TREATMENT OF THIS SECITON.—For purposes of section 107(d) of the Natural Gas Policy Act of 1978, this section shasll not be treated as allowing any credit, exemption, deduction, or comparable adjustment applicable to the computation of any Federal Tax.

(f) APPLICATION OF SECTION.—

IN GENERAL.—Except as provided in paragraph (2), this section shall apply with respect to qualified fuels—

(A) which are—

(i) produced from a well drilled after December 31, 1979, and before January 1, 1990, or

(ii) produced in a facility placed in service after Decemer 31, 1979, and before Janaury 1, 1990, and

(B) which are sold after December 31, 1979, and before Janaury 1, 2001.

(2) SPECIAL RULES APPLICABLE TO QUALIFIED PROCESSED WOOD AND SOLID AGRICULTURAL BYPRODUCT STEAM.—

(A) CREDIT ALLOWED ONLY FOR CERTAIN PRODUCTION.—In the case of qualifying processed wood fuel and steam from solid agricultural byproducts, this section shall apply only with respect to—

(i) qualifying precessed wood fuel produced in facilities placed in service after December 31, 1979, and bfore January 1, 1982, which is sold before the later of—

(I) October 1, 1983, or

(II) the date which is 3 years after the date on which the facility is placed in service, and

(ii) steam produced in facilites placed in service after December 31, 1979, from solid agricultural byproduct which is sold before Janaury 1, 1985.

(B) EXPENDED PRODUCTION OF STEAM TREATED AS NEW FACILITY PRODUCTION.—For purposes of this subsection and subsection (d)(5), in the case of a facility for the production of steam from solid agricultural byproducts which was placed in service before Janaury 1, 1980, any production of steam attributable to an expansion of the capacity of the facility to produce such steam through placing additional or replacement equipment in service after December 31, 1979, shall be treated as if it were produced by a facility placed in service on the date on which such equipment is placed in service.

SEC. [44F.] *30.* CREDIT FOR INCREASING RESEARCH ACTIVITIES.

[(a) General Rule.—There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 25 percent of the excess (if any) of—]

(a) General Rule.—For purposes of section 38, the research credit determined under this section for the taxable year is an amount equal to 25 percent of the excess (if any) of—

(1) the qualified research expenses for the taxable year, over

(2) the base period research expenses.

(b) Qualified Research Expenses.—For purposes of this section—

(1) Qualified research expenses.—The term "qualified research expenses" means the sum of the following amounts which are paid or incurred by the taxpayer during the taxable year in carrying on any trade or business of the taxpayer—

(A) in-house research expenses, and

(B) contract research expenses.

(2) In-house research expenses.—

(A) In general.—The term "in-house research expenses" means—

(i) any wages paid or incurred to an employee for qualified services performed by such employee,

(ii) any amount paid or incurred for supplies used in the conduct of qualified research, and

(iii) any amount paid or incurred to another person for the right to use personal property in the conduct of qualified research.

Clause (iii) shall not apply to any amount to the extent that the taxpayer (or any person with whom the taxpayer must aggregate expenditures under subsection (f)(1)) receives or accrues any amount from any other person for the right to use substantially identical personal property.

(B) Qualified services.—The term "qualified services" means services consisting of—

(i) engaging in qualified research, or

(ii) engaging in the direct supervision or direct support of research activities which constitute qualified research.

If substantially all of the services performed by an individual for the taxpayer during the taxable year consists of services meeting the requirements of clause (i) or (ii), the term "qualified services" means all of the services performed by such individual for the taxpayer during the taxable year.

(C) Supplies.—The term "supplies" means any tangible property other than—

(i) land or improvements to land, and

(ii) property of a character subject to the allowance for depreciation.

(D) Wages.—

(i) In general.—The term "wages" has the meaning given such term by section 3401(a).

(ii) Self-employed individuals and owner-employees.—In the case of an employee (within the meaning of section 401(c)(1), the term "wages" includes the earned income (as defined in section 401(c)(2)) of such employee.

(iii) EXCLUSION FOR WAGES TO WHICH NEW JOBS OR WIN CREDIT APPLIES.—The term "wages" shall not include any amount taken into account [in computing the credit under section 40 or 44B] *in determining the targeted jobs credit under section 51(a).*

(3) CONTRACT RESEARCH EXPENSES.—

(A) IN GENERAL.—The term "contract research expenses" means 65 percent of any amount paid or incurred by the taxpayer to any person (other than an employee of the taxpayer) for qualified research.

(B) PREPAID AMOUNTS.—If any contract research expenses paid or incurred during any taxable year are attributable to qualified research to be conducted after the close of such taxable year, such amount shall be treated as paid or incurred during the period during which the qualified research is conducted.

(c) BASE PERIOD RESEARCH EXPENSES.—For purposes of this section—

(1) IN GENERAL.—The term "base period research expenses" means the average of the qualified research expenses for each year in the base period.

(2) BASE PERIOD.—

(A) IN GENERAL.—for purposes of this subsection, the term "base period" means the 3 taxable years immediately preceding the taxable year for which the determination is being made (hereinafter in this subsection referred to as the "determination year").

(B) TRANSITIONAL RULES.—Subparagraph (A) shall be applied—

(i) by substituting "first taxable year" for "3 taxable years" in the case of the first determination year ending after June 30, 1981, and

(ii) by substituting "2" for "3" in the case of the second determination year ending after June 30, 1981.

(3) MINIMUM BASE PERIOD RESEARCH EXPENSES.—In no event shall the base period research expenses be less than 50 percent of the qualified research expenses for the determination year.

(d) QUALIFIED RESEARCH.—For purposes of this section the term "qualified research" has the same meaning as the term research or experimental has under section 174, except that such term shall not include—

(1) qualified research conducted outside the United States,

(2) qualified research in the social sciences or humanities, and

(3) qualified research to the extent funded by any grant, contract, or otherwise by another person (or any governmental entity).

(e) CREDIT AVAILABLE WITH RESPECT TO CERTAIN BASIC RESEARCH BY COLLEGES, UNIVERSITIES, AND CERTAIN RESEARCH ORGANIZATIONS.—

(1) In general.—65 percent of any amount paid or incurred by a corporation (as such term is defined in section 170(e)(4)(d)) to any qualfied organization for basic reaseach to be performed by such organization shall be treated as contract research expenses. The preceding sentence shall apply only if the amount is paid or incurred pursuant to a written research agreement between the corporation and the qualified organization.

(2) Qualified organization.—For purposes of this subsection, the term "qualified organization" means—

(A) any educational organization which is described in section 170(b)(1)(A)(ii) and which is an institution of higher education (as defined in section 3304(f)), and

(B) any other organization which—

(i) is described in section 501(c)(3) and exempt from tax under section 501(a),

(ii) is organized and operated primarily to conduct scientific research, and

(iii) is not a private foundation.

(3) Basic research.—The term "basic research" means any original investigation for the advancement of scientific knowledge not having a specific commercial objective, except that such term shall not include—

(A) basic research conducted outside the United States, and

(B) basic research in the social sciences or humanities.

(4) Special rules for grants to certain funds—

(A) In general.—For purposes of this subsection, a qualified fund shall be treated as a qualified organization and the requirements of paragraph (1) that the basic research be performed by the qualified organization shall not apply.

(B) Qualified fund.—For purposes of subparagraph (A), the term "qualified fund" means any organization which—

(i) is described in section 501(c)(3) and exempt from tax under section 501(a) and is not a private foundation,

(ii) is established and maintained by an organization established before July 10, 1981, which meets the requirements of clause (i),

(iii) is organized and operated exclusively for purposes of making grants pursuant to written research agreements to organizations described in paragraph (2)(A) for purposes of basic research, and

(iv) makes an election under this paragraph.

(C) Effect of election.—

(i) In general.—Any organization which makes an election under this paragraph shall be treated as a private foundation for purposes of this title (other than section 4940, relating to excise tax based on investment income).

(ii) Election revocable only with consent.—An election under this paragraph, once made, may be revoked only with the consent of the Secretary.

(f) Special Rules.—For purposes of this section—

(1) **Aggregation of expenditures.**—

(A) **Controlled group of corporations.**—In determining the amount of the credit under this section—

(i) all members of the same controlled group of corporations shall be treated as a single taxpayer, and

(ii) [the credit (if any) allowable by this section to each] *the credit (if any) determined under this section for* each such member shall be its proportionate share of the increase in qualified research expenses giving rise to the credit.

(B) **Common control.**—Under regulations prescribed by the Secretary, in determining the amount of the credit under this section—

(i) all trades or businesses (whether or not incorporated) which are under common control shall be treated as a single taxpayer, and

(ii) [the credit (if any) allowable by this section to each] *the credit (if any) determined under this section for each* such person shall be its proportionate share of the increase in qualified research expenses giving rise to the credit.

The regulations prescribed under this subparagraph shall be based on principles similar to the principles which apply in the case of subparagraph (A).

(2) **Allocations.**—

(A) **Pass-thru in the case of estates and trusts.**—Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

(B) **Allocation in the case of partnerships.**—In the case of partnerships the credit shall be allocated among partners under regulations prescribed by the Secretary.

(3) **Adjustments for certain acquisitions, etc.**—Under regulations prescribed by the Secretary—

(A) **Acquisitions.**—If, after June 30, 1980, a taxpayer acquires the major portion of a trade or business of another person (hereinafter in this paragraph referred to as the "predecessor") or the major portion of a separate unit of a trade or business of a predecessor, then, for purposes of applying this section for any taxable year ending after such acquisition, the amount of qualified research expenses paid or incurred by the taxpayer during periods before such acquisition shall be increased by so much of such expenses paid or incurred by the predecessor with respect to the acquired trade or business as is attributable to the portion of such trade or business or separate unit acquired by the taxpayer.

(B) **Dispositions.**—If, after June 30, 1980—

(i) a taxpayer disposes of the major portion of any trade or business or the major portion of a separate unit of a trade or business in a transaction to which subparagraph (A) applies, and

(ii) the taxpayer furnished the acquiring person such information as is necessary for the application of subparagraph (A), then, for purposes of applying this section for any taxable year ending after such disposition, the amount of qualified research expenses paid or incurred by the taxpayer during periods before such disposition shall be decreased by so much of such expenses as is attributable to the portion of such trade or business or separate unit disposed of by the taxpayer.

(C) INCREASE IN BASE PERIOD.—If during any of the 3 taxable years following the taxable year in which a disposition to which subparagraph (B) applies occurs, the disposing taxpayer (or a person with whom the taxpayer is required to aggregate expenditures under paragraph (1)) reimburses the acquiring person (or a person required to so aggregate expenditures with such person) for research on behalf of the taxpayer, then the amount of qualified research expenses of the taxpayer for the base period for such taxable year shall be increased by the lesser of—

(i) the amount of the decrease under subparagraph (B) which is allocable to such base period, or

(ii) the product of the number of years in the base period, multiplied by the amount of the reimbursement described in this subparagraph.

(4) SHORT TAXABLE YEARS.—In the case of any short taxable year, qualified research expenses shall be annualized in such circumstances and under such methods as the Secretary may prescribe by regulation.

(5) CONTROLLED GROUP OF CORPORATIONS.—The term "controlled group of corporations" has the same meaning given to such term by section 1563(a) except that—

(A) "more that 50 percent" shall be substituted for "at least 80 percent" each place it appears in section 1563(a)(1), and

(B) the determination shall be made without regard to subsections (a)(4) and (e)(3)(C) of section 1563.

(g) LIMITATION BASED ON AMOUNT OF TAX.—

(1) LIABILITY FOR TAX.—

[(A) IN GENERAL.—Except as provided in subparagraph (B), the credit allowed by subsection (a) for any taxable year shall not exceed the amount of the tax imposed by this chapter reduced by the sum of the credits allowable under a section of this part having a lower number or letter designation than this section, other than the credits allowable by sections 31, 39, and 43. For purposes of the preceding sentence, the term "tax imposed by this chapter" shall not include any tax treated as not imposed by this chapter under the last sentence of section 53(a).]

(A) IN GENERAL.—Except as provided in subparagraph (B), the credit allowed by subsection (a) for any taxable year shall not exceed the taxpayer's tax liability for the taxable year (as defined in section 26(b)), reduced by the sum of the credits allowable under subpart A and sections 27, 28, and 29.

(B) SPECIAL RULE FOR PASSTHROUGH OF CREDIT.—In the case of an individual who—

(i) owns an interest in an unincorporated trade or business,

(ii) is a partner in a partnership,

(iii) is a beneficiary of an estate or trust, or

(iv) is a shareholder in an S corporation,

the credit allowed by subsection (a) for any taxable year shall not exceed the lesser of the amount determined under subparagraph (A) for the taxable year or an amount (separately computed with respect to such person's interest in such trade or business or entity) equal to the amount of tax attributable to that portion of a person's taxable income which is allocable or apportionable to the person's interest in such trade or business or entity.

(2) Carryback and carryover of unused credit.—

(A) Allowance of credit.—If the amount of the credit determined under this section for any taxable year exceeds the limitation provided by paragraph (1) for such taxable year (hereinafter in this paragraph referred to as the "unused credit year"), such excess shall be—

(i) a research credit carryback to each of the 3 taxable years preceding the unused credit year, and

(ii) a research credit carryover to each of the 15 taxable years following the unused credit year,

and shall be added to the amount allowable as a credit by this section for such years. If any portion of such excess is a carryback to a taxable year beginning before July 1, 1981, this section shall be deemed to have been in effect for such taxable year for purposes of allowing such carryback as a credit under this section. The entire amount of the unused credit for an unused credit year shall be carried to the earliest of the 18 taxable years to which (by reason of clauses (i) and (ii)) such credit may be carried, and then to each of the other 17 taxable years to the extent that, because of the limitation contained in subparagraph (B), such unused credit may not be added for a prior taxable year to which such unused credit may be carried.

(B) Limitation.—The amount of the unused credit which may be added under subparagraph (A) for any preceding or succeeding taxable year shall not exceed the amount by which the limitation provided by paragraph (1) for such taxable year exceeds the sum of—

(i) the credit allowable under this section for such taxable year, and

(ii) the amounts which, by reason of this paragraph, are added to the amount allowable for such taxable year and which are attributable to taxable years preceding the unused credit year.

Subpart C—Refundable Credits

Sec. 31. Tax withheld on wages, interest, dividends, and patronage dividends.
Sec. 32. Earned income.
Sec. 33. Tax withheld at source on nonresident aliens and foreign corporations.
Sec. 34. Certain uses of gasoline and special fuels.
Sec. 35. Overpayments of tax.

SEC. 31. TAX WITHHELD ON WAGES.

(a) WAGE WITHHOLDING FOR INCOME TAX PURPOSES.—

(1) IN GENERAL.—The amount withheld [under section 3402 as tax on the wages of any individual] shall be allowed to be recipient of the income as a credit against the tax imposed by this subtitle.

(2) YEAR OF CREDIT.—The amount so withheld during any calendar year shall be allowed as a credit for the taxable year beginning in such calendar year. If more than one taxable year begins in a calendar year, such amount shall be allowed as a credit for the last taxable year so beginning.

(b) WITHHOLDING FROM INTEREST, DIVIDENDS, AND PATRONAGE DIVIDENDS.—The amount withheld under section 3451 as tax on interest, dividends, and patronage dividends shall be allowed to the recipient of the income as a credit against the tax imposed by this subtitle.

(c) CREDIT FOR SPECIAL REFUNDS OF SOCIAL SECURITY TAX.—The Secretary may prescribe regulations providing for the crediting against the tax imposed by this subtitle of the amount determined by the taxpayer or the Secretary to be allowable under section 6413(c) as a special refund of tax imposed on wages. The amount allowed as a credit under such regulations shall, for purposes of this subtitle, be considered an amount withheld at source as tax under section 3402.

(d) YEAR FOR WHICH CREDIT ALLOWED.—

(1) WAGES.—Any credit allowed—

(A) by subsection (a) shall be allowed for the taxable year beginning in the calendar year in which the amount is withheld, or

(B) by subsection (c) shall be allowed for the taxable year beginning in the calendar year in which the wages are received.

For purposes of this paragraph, if more than 1 taxable year begins in a calendar year, such amount shall be allowed as a credit for the last taxable year so beginning.

(2) INTEREST, DIVIDENDS, AND PATRONAGE DIVIDENDS.—Any credit allowed by subsection (b) shall be allowed for the taxable year of the recipient of the income in which the amount is received.

SEC. [43.] *32.* EARNED INCOME.

(a) ALLOWANCE OF CREDIT.—In the case of an eligible individual, there is allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to 10 percent of so much of the earned income for the taxable year as does not exceed $5,000.

(b) LIMITATION.—That amount of the credit allowable to a taxpayer under subsection (a) for any taxable year shall not exceed the excess (if any) of—

(1) $500, over

(2) 12.5 percent of so much of the adjusted gross income (or, if greater, the earned income) of the taxpayer for the taxable year as exceeds $6,000.

(c) DEFINITIONS.—For purposes of this section—

(1) Eligible individual.—

(A) In general.—The term "eligible individual" means an individual who, for the taxable year—

(i) is married (within the meaning of section 143) and is entitled to a deduction under section 151 for a child (within the meaning of section 151(e)(3)), or would be so entitled but for paragraph (2) or (4) of section 152(e),

(ii) is a surviving spouse (as determined under section 2(a)), or

(B) Child must reside with taxpayer in the United States.—An individual shall be treated as satisfying clause (i) of subparagraph (A) only if the child has the same principal place of abode as the individual and such abode is in the United States. An individual shall be treated as satisfying clause (ii) or (iii) of subparagraph (A) only if the household in question is in the United States.

(iii) is a head of a household (as determined under subsection (b) of section 2 without regard to subparagraphs (A)(ii) and (B) pargarph (1) of such subsection).

(C) Individual who claims benefits of section 911 or 931 not eligible individual.—The term "eligible individual" does not include an individual who, for the taxable year, claims the benefits of—

(i) section 911 (relating to citizens or residents of the United States living abroad),

(ii) section 931 (relating to income from sources within possessions of the United States).

(2) Earned income.—

(A) The term "earned income" means—

(i) wages, salaries, tips, and other employee compensation, plus

(ii) the amount of the taxpayer's net earnings from self-employment for the taxable year (within the meaning of section 1402(a)).

(B) For purposes of subparagraph (A)—

(i) the earned income of an individual shall be computed without regard to any community property laws,

(ii) no amount received as a pension or annuity shall be taken into account, and

(iii) no amount to which section 871(a) applies (relating to income of nonresident alien individuals not connected with United States business) shall be taken into account.

(d) Married Individuals.—In the case of an individual who is married (within the meaning of section 143), this section shall apply only if a joint return is filed for the taxable year under section 6013.

(e) Taxable Year Must Be Full Taxable Year.—Except in the case of a taxable year closed by reason of the death of the taxpayer, no credit shall be allowable under this section in the case of a taxable year covering a period of less than 12 months.

(f) Amount of Credit To Be Determined Under Tables.—

(1) In General.—The amount of the credit allowed by this section shall be determined under tables prescribed by the Secretary.

(2) Requirements for tables.—The tables prescribed under paragraph (1) shall reflect the provisions of subsections (a) and (b) and shall have income brackets of not greater than $50 each—

(A) for earned income between $0 and $10,000, and

(B) for adjusted gross income between $6,000 and $10,000.

(g) Coordination with Advance Payments of Earned Income Credit.—

(1) Recapture of excess advance payments.—If any payment is made to the individual by an employer under section 3507 during any calendar year, then the tax imposed by this chapter for the individual's last taxable year beginning in such calendar year shall be increased by the aggregate amount of such payments.

(2) Reconciliation of payments advanced and credit allowed.—Any increase in tax under paragraph (1) shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit (other than the credit allowed by subsection (a)) allowable under this subpart.

[SEC. 32. TAX WITHHELD AT SOURCE ON NONRESIDENT ALIENS AND FOREIGN CORPORATIONS AND ON TAX-FREE COVENANT BONDS.

[There shall be allowed as credits against the tax imposed by this chapter—

[(1) the amount of tax withheld at source under subchapter A of chapter 3 (relating to withholding of tax on nonresident aliens and on foreign corporations), and

[(2) the amount of tax withheld at source under subchapter B of chapter 3 (relating to interest on tax-free covenant bonds).]

SEC. 33. TAX WITHHELD AT SOURCE ON NONRESIDENT ALIENS AND FOREIGN CORPORATIONS.

There shall be allowed as a credit against the tax imposed by this subtitle the amount of tax withheld at source under subchapter A of chapter 3 (relating to withholding of tax on nonresident aliens and on foreign corporations).

SEC. [39.] *34.* CERTAIN USES OF GASOLINE, AND SPECIAL FUELS

(a) General Rule.—There shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to the sum of the amounts payable to the taxpayer—

(1) under section 6420 with respect to gasoline used during the taxable year on a farm for farming purposes (determined without regard to section 6420(g)),

(2) under section 6421 with respect to gasoline used during the taxable year (A) otherwise than as a fuel in a highway vehicle or (B) in vehicles while engaged in furnishing certain public passenger land transportation service (determined without regard to section 6421(i)), and

(3) under section 6427 with respect to fuels used for nontaxable purposes or resold during the taxable year (determined without regard to section 6427(i)).

(b) Exception.—Credit shall not be allowed under subsection (a) for any amount payable under section 6421 or 6427, if a claim for such amount is timely filed and, under section 6421(i) or 6427(i), is payable under such section.

SEC. [45.] *35.* OVERPAYMENTS OF TAX.

For credit against the tax imposed by this subtitle for overpayments of tax, see section 6401.

[SEC. 38. INVESTMENT IN CERTAIN DEPRECIABLE PROPERTY.

[(a) General Rule.—There shall be allowed, as a credit against the tax imposed by this chapter, the amount determined under subpart B of this part.

[(b) Regulations.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section and subpart B.]

Subpart D—Business Related Credits

Sec. 38. General business credit.
Sec. 39. Carryback and carry forward of usused credits.
Sec. 40. Alcohol used as fuel.
Sec. 41. Employee stock ownership credit.

SEC. 38. GENERAL BUSINESS CREDIT.

(a) Allowance of Credit.—There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of—

(1) the business credit carryforwards carried to such taxable year,

(2) the amount of the current year business credit, plus

(3) the business credit carrybacks carried to such taxable year.

(b) Current Year Business Credit.—For purposes of this subpart, the amount of the current year business credit is the sum of the following credits determined for the taxable year:

(1) the investment credit determined under section 46(a),

(2) the targeted jobs credit determined under section 51(a),

(3) the alcohol fuels credit determined under section 40(a), plus

(4) the employee stock ownership credit determined under section 41(a).

(c) Limitation Based on Amount of Tax.—

(1) In general.—The credit allowed under subsection (a) for any taxable year shall not exceed the sum of—

(A) so much of the taxpayer's net tax liability for the taxable year as does not exceed $25,000, plus

(B) 85 percent of so much of the taxpayer's net tax liability for the taxable year as exceeds $25,000.

(2) Net tax liability.—For purposes of paragraph (1), the term "net tax liability" means the tax liability (as defined in section 26(b), reduced by the sum of the credits allowable under subparts A and B of this part.

(3) Special rules.—

(A) MARRIED INDIVIDUALS.—In the case of a husband or wife who files a separate return, the amount specified under subparagraphs (A) and (B) of paragraph (1) shall be $12,500 in lieu of $25,000. This subparagraph shall not apply if the spouse of the taxpayer has no business credit carryforward or carryback to, and has no current year business credit for, the taxable year of such spouse which ends within or with the taxpayer's taxable year.

(B) CONTROLLED GROUPS.—In the case of a controlled group, the $25,000 amount specified under subparagraph (A) and (B) of paragraph (1) shall be reduced for each component member of such group by apportioning $25,000 among the component members of such group in such manner as the Secretary shall by regulations prescribe. For purposes of the preceding sentence, the term "controlled group" has the meaning given to such term by section 1563(a).

(C) LIMITATIONS WITH RESPECT TO CERTAIN PERSONS.—In the case of a person described in subparagraph (A) or (B) of section 46(e)(1), the $25,000 amount specified under subparagraphs (A) and (B) of paragraph (1) shall equal such person's ratable share (as determined under section 46(e)(2)) of such amount.

(D) ESTATES AND TRUSTS.—In the case of an estate or trust, the $25,000 amount specified under subparagraphs (A) and (B) of paragraph (1) shall be reduced to an amount which bears the same ratio to $25,000 as the portion of the income of the estate or trust which is not allocated to beneficiaries bears to the total income of the estate or trust.

(d) SPECIAL RULES FOR CERTAIN REGULATED COMPANIES.—In the case of any taxpayer to which section 46(f) applies, for purposes of sections 46(f), 47(a), 196(a), and 404(i) and any other provision of this title where it is necessary to ascertain the extent to which the credits determined under section 40(a), 41(a), 46(a), or 51(a) are used in a taxable year or as a carryback or carryforward, the order in which such credits are used shall be determined on the basis of the order in which they are listed in subsection (b).

SEC. 39. CARRYBACK AND CARRYFORWARD OF UNUSED CREDITS.

(a) IN GENERAL.—

(1) 3 YEAR CARRYBACK AND 15 YEAR CARRYFORWARD.—If the sum of the business credit carryforwards to the taxable year plus the amount of the current year business credit for the taxable year exceeds the amount of the limitation imposed by subsection (c) of section 38 for such taxable year (hereinafter in this section referred to as the 'unused credit year'), such excess (to the extent attributable to the amount of the current year business credit) shall be—

(A) a business credit carryback to each of the 3 taxable years preceding the unused credit year, and

(B) a business credit carryforward to each of the 15 taxable years following the unused credit year,

and, subject to the limitations imposed by subsections (b) and (c), shall be taken into account under the provisions of section 38(a) in the manner provided in section 38(a).

(2) AMOUNT CARRIED TO EACH YEAR.—

(A) ENTIRE AMOUNT CARRIED TO FIRST YEAR.—The entire amount of the unused credit for an unused credit year shall be carried to the earliest of the 18 taxable years to which (by reason of paragraph (1)) such credit may be carried.

(B) AMOUNT CARRIED TO OTHER 17 YEARS.—The amount of the unused credit for the unused credit year shall be carried to each of the other 17 taxable years to the extent that such unused credit may not be taken into account under section 38(a) for a prior taxable year because of the limitations of subsections (b) and (c).

(b) LIMITATION ON CARRYBACKS.—The amount of the unused credit which may be taken into account under section 38(a)(3) for any preceding taxable year shall not exceed the amount by which the limitation imposed by section 38(c) for such taxable year exceeds the sum of—

(1) the amounts determined under paragraphs (1) and (2) of section 38(a) for such taxable year, plus

(2) the amounts which (by reason of this section) are carried back to such taxable year and are attributable to taxable years preceding the unused credit year.

(c) LIMITATION ON CARRYFORWARDS.—The amount of the unused credit which may be taken into account under section 38(a)(1) for any succeeding taxable year shall not exceed the amount by which the limitation imposed by section 38(c) for such taxable year exceeds the sum of the amounts which, by reason of this section, are carried to such taxable year and are attributable to taxable years preceding the unused credit year.

(d) TRANSITIONAL RULES.—

(1) CARRYFORWARDS.—

(A) IN GENERAL.—Any carryforward from an unused credit year under section 46, 50A, 53, 44E, or 44G which has not expired before the beginning of the first taxable year beginning after December 31, 1983, shall be aggregated with other such carryforwards from such unused credit year and shall be a business credit carryforward to each taxable year beginning after December 31, 1983, which is 1 of the first 15 taxable years after such unused credit year.

(B) AMOUNT CARRIED FORWARD.—The amount carried forward under subparagraph (A) to any taxable year shall be properly reduced for any amount allowable as a credit with respect to such carryforward for any taxable year before the year to which it is being carried.

(2) CARRYBACKS.—In determining the amount allowable as a credit for any taxable year beginning before January 1, 1984, as the result of the carryback of a general business tax credit from a taxable year beginning after December 31, 1983, paragraph (1) of subsection (b) shall be applied as if it read as follows:

"(1) the sum of the credits allowable for such taxable year under sections 38, 40, 44B, 44E, and 44G, plus".

[SEC. 40. EXPENSES OF WORK INCENTIVE PROGRAMS.

[(a) GENERAL RULE.—There shall be allowed, as a credit against the tax imposed by this chapter, the amount determined under subpart C of this part.

[(b) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section and subpart C.]

SEC. [44E.] ALCOHOL USED AS FUEL.

[(a) GENERAL RULE.—There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of—]

(a) GENERAL RULE.—For purposes of section 38, the alcohol fuels credit determined under this section for the taxable year is an amount equal to the sum of—

(1) the alcohol mixture credit, plus

(2) the alcohol credit.

(b) DEFINITION OF ALCOHOL MIXTURE CREDIT AND ALCOHOL CREDIT.—For purposes of this section—

(1) ALCOHOL MIXTURE CREDIT.—

(A) IN GENERAL.—The alcohol mixture credit of any taxpayer for any taxable year is 50 cents for each gallon of alcohol used by the taxpayer in the production of a qualified mixture.

(B) QUALIFIED MIXTURE.—The term "qualified mixture" means a mixture of alcohol and gasoline or of alcohol and a special fuel which—

(i) is sold by the taxpayer producing such mixture to any person for use as a fuel, or

(ii) is used as fuel by the taxpayer producing such mixture.

(C) SALE OR USE MUST BE IN TRADE OR BUSINESS, ETC.—Alcohol used in the production of a qualified mixture shall be taken into account—

(i) only if the sale or use described in subparagraph (B) is in a trade or business of the taxpayer, and

(ii) for the taxable year in which such sale or use occurs.

(D) CASUAL OFF-FARM PRODUCTION NOT ELIGIBLE.—No credit shall be allowed under this section with respect to any casual off-farm production of a qualified mixture.

(2) ALCOHOL CREDIT.—

(A) IN GENERAL.—The alcohol credit of any taxpayer for any taxable year is 50 cents for each gallon of alcohol which is not in a mixture with gasoline or a special fuel (other than any denaturant) and which during the taxable year—

(i) is used by the taxpayer as a fuel in a trade or business, or

(ii) is sold by the taxpayer at retail to a person and placed in the fuel tank of such person's vehicle.

(B) USER CREDIT NOT TO APPLY TO ALCOHOL SOLD AT RETAIL.—No credit shall be allowed under subparagraph

(A)(i) with respect to any alcohol which was sold in a retail sale described in subparagraph (A)(ii).

(3) SMALLER CREDIT FOR LOWER PROOF ALCOHOL.—In the case of any alcohol with a proof which is at least 150 but less than 190, paragraphs (1)(A) and (2)(A) shall be applied by substituting "37.5 cents" "50 cents".

(4) ADDING OF DENATURANTS NOT TREATED AS MIXTURE.—The adding of any denaturant to alcohol shall not be treated as the production of a mixture.

(c) COORDINATION WITH EXEMPTION FROM EXCISE TAX.—The amount of the credit [allowable] *determined* under this section respect to any alcohol shall, under regulations prescribed by the secretary, be properly reduced to take into account any benefit provided with respect to such alcohol solely by reason of the application of subsection (b)(2) or (k) of section 4041 or section 4081(c).

(d) DEFINITIONS AND SPECIAL RULES—For purposes of this section—

(1) ALCOHOL DEFINED.—

(A) IN GENERAL.—The term "alcohol" includes methanol and ethanol but does not include—

(i) alcohol produced from petroleum, natural gas, or coal, or

(ii) alcohol with a proof of less than 150.

(B) DETERMINATION OF PROOF.—The determination of the proof of any alcohol shall be made without regard to any added denaturants.

(2) SPECIAL FUEL DEFINED.—The term "special fuel" includes any liquid fuel (other than gasoline) which is suitable for use in an internal combustion engine.

(3) MIXTURE OR ALCOHOL NOT USED AS A FUEL, ETC.—

(A) MIXTURES—If—

(i) any credit was [allowable] *determined* under this section with respect to alcohol use in the production of any qualified mixture, and

(ii) any person—

(I) separates the alcohol from the mixture, or

(II) without separation, uses the mixture other than as a fuel,

then there is hereby imposed on such person a tax equal to 50 cents a gallon (37.5 cents in the case of alcohol with a proof less than 190) for each gallon of alcohol in such mixture.

(B) ALCOHOL.—If—

(i) any credit was [allowable] *determined* under this section with respect to the retail sale of any alcohol, and

(ii) any person mixes such alcohol or uses such alcohol other than as a fuel,

then there is hereby imposed on such person a tax equal to 50 cents a gallon (37.5 cents in the case of alcohol with a proof less than 190) for each gallon of such alcohol.

(C) APPLICABLE LAWS.—All provisions of law, including penalties, shall, insofar as applicable and not inconsistent with this section, apply in respect of any tax imposed under subparagraph (A) or (B) as if such tax were imposed by section 4081 and not by this chapter.

(4) Volume of alcohol.—For purposes of determining—

(A) under subsection (a) the number of gallons of alcohol with respect to which a credit is allowable under subsection (a), or

(B) under section 4041(k) or 4081(c) the percentage of any mixture which consists of alcohol,

the volume of alcohol shall include the volume of any denaturant (including gasoline) which is added under any formulas approved by the Secretary to the extent that such denaturants do not exceed 5 percent of the volume of such alcohol (including denaturants).

(5) Pass-thru in the case of estates and trusts.—Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

[(e) Limitation Based on Amount of Tax.—

[(1) In general.—The amount of the credit allowed by this section for the taxable year shall not exceed the tax imposed by this chapter for the taxable year, reduced by the sum of the credits allowed under a section of this subpart having a lower number designation than this section, other than credits allowable by sections 31, 39, and 43. For purposes of the preceding sentence, the term "tax imposed by this chapter" shall not include any tax treated as not imposed by this chapter under the last sentence of section 53(a).

[(2) Carryover of unused credit.—

[(A) In general.—If the amount of the credit determined under subsection (a) for any taxable year exceeds the limitation provided by paragraph (1) for such taxable year (hereinafter in this paragraph referred to as the "unused credit year"), such excess shall be an alcohol fuel credit carryover to each of the 15 taxable years following the unused credit year, and shall be added to the amount allowable as credit under subsection (a) for such years. The entire amount of the unused credit for an unused credit year shall be carried to the earliest of the 15 taxable years to which (by reason of the preceding sentence) such credit may be carried, and then to each of the other 14 taxable years to the extent that, because of the limitation contained in subparagraph (B), such unused credit may not be added for a prior taxable year to which such unused credit may be carried.

[(B) Limitation.—The amount of the unused credit which may be added under subparagraph (A) for any succeeding taxable year shall not exceed the amount by which the limitation provided by paragraph (1) for such succeeding taxable year exceeds the sum of—

[(i) the credit allowable under subsection (a) for such taxable year and

[(ii) the amounts which, by reason of this paragraph, are added to the amount allowable for such taxable year and which are attributable to taxable years preceding the unused credit year.]

[(f)] *(e)* TERMINATION.

(1) IN GENERAL.—This section shall not apply to any sale or use after December 31, 1992.

[(2) NO CARRYOVERS TO YEARS AFTER 1994.—No amount may be carried under subsection (e)(2) to any taxable year beginning after December 31, 1994.]

(2) NO CARRYOVERS TO YEARS AFTER 1994.—No amount may be carried under section 39 by reason of this section (treating the amount allowed by reason of this section as the first amount allowed by this subpart) to any taxable year beginning after December 31, 1994.

(f) ELECTION TO HAVE ALCOHOL FUELS CREDIT NOT APPLY—

(1) IN GENERAL.—A taxpayer may elect to have this section not apply for any taxable year.

(2) TIME FOR MAKING ELECTION.—An election under subsection (a) for any taxable year may be made (or revoked) at any time before the expiration of the 3-year period beginning on the last date prescribed by law for filing the return for such taxable year (determined without regard to extensions).

(3) MANNER OF MAKING ELECTION.—An election under subsection (a) (or revocation thereof) shall be made in such manner as the Secretary may by regulations prescribe.

SEC. [44G.]*41.* EMPLOYEE STOCK OWNERSHIP CREDIT.

(a) GENERAL RULE.—

[(1) CREDIT ALLOWED.—In the case of a corporation which elects to have this section apply for the taxable year and which meets the requirements of subsection (c)(1), there is allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the amount of the credit determined under paragraph (2) for such taxable year.]

(1) AMOUNT OF CREDIT.—In the case of a corporation which elects to have this section apply for the taxable year and which meets the requirements of subsection (c)(1), for purposes of section 38, the amount of the employee stock ownership credit determined under this section for the taxable year is an amount equal to the amount of the credit determined under paragraph (2) for such taxable year.

(2) DETERMINATION OF AMOUNT.—

(A) IN GENERAL.—The amount of the credit determined under this paragraph for the taxable year shall be equal to the lesser of—

(i) the aggregate value of employer securities transferred by the corporation for the taxable year to a tax credit employee stock ownership plan maintained by the corporation, or

(ii) the applicable percentage of the amount of the aggregate compensation (within the meaning of section 415(c)(3)) paid or accured during the taxable year to all employees under a tax credit employee stock ownership plan.

(B) APPLICABLE PERCENTAGE.—For purposes of applying subparagraph (A)(ii), the applicable percentage shall be determined in accordance with the following table:

For aggregate compensation paid or accrued during a portion of the taxable year occurring in calendar year:	The applicable percentage is:
1983	0.5
1984	0.5
1985	0.75
1986	0.75
1987	0.75
1988 or thereafter	0

[(b) LIMITATION BASED ON AMOUNT OF TAX.—

[(1) LIABILITY FOR TAX.—

[(A) IN GENERAL.—The credit allowed by subsection (a) for any taxable year shall not exceed an amount equal to the sum of—

[(i) so much of the liability for tax for the taxable year as does not exceed $25,000, plus

[(ii) 90 percent of so much of the liability for tax for the taxable year as exceeds $25,000.

[(B) LIABILITY FOR TAX DEFINED.—For purposes of this paragraph the term "liability for tax" means the tax imposed by this chapter for the taxable year, reduced by the sum of the credits allowed under a section of this subpart having a lower number designation than this section, other than credits allowable by sections 31, 39, and 43. For purposes of the preceding sentence, the term "tax imposed by this chapter" shall not include any tax treated as not imposed by this chapter under the last sentence of section 53(a).

[(C) CONTROLLED GROUPS.—In the case of a controlled group of corporations, the $25,000 amount specified in subparagraph (A) shall be reduced for each component member of such group by apportioning $25,000 among the component members of such group in such manner as the Secretary shall be regulations prescribe. For purposes of the preceding sentence, the term "controlled group of corporations" has the meaning assigned to such term by section 1563(a) (determined without regard to subsections (a)(4) and (e)(3)(C) of such section).

[(2) CARRYBACK AND CARRYOVER OF UNUSED CREDIT.—

[(A) ALLOWANCE OF CREDIT.—If the amount of the credit determined under this section for any taxable year exceeds the limitation provided under paragraph (1)(A) for such taxable year (hereinafter in this paragraph referred to as the "unused credit year"), such excess shall be—

[(i) an employee stock ownership credit carryback to each of the 3 taxable years preceding the unused credit year, and

[(ii) an employee stock ownership credit carryover to each of the 15 taxable years following the unused credit year,

and shall be added to the amount allowable as a credit by this section for such years. If any portion of such excess is a carryback to a taxable year ending before January 1, 1983, this section shall be deemed to have been in effect for such taxable year for purposes of allowing such carryback as a credit under this section. The entire amount of the unused credit for an unused credit year shall be carried to the earliest of the 18 taxable years to which (by reason of clauses (i) and (ii)) such credit may be carried, and then to each of the other 17 taxable years to the extent that, because of the limitation contained in subparagraph (B), such unused credit may not be added for a prior taxable year to which such unused credit may be carried.

[(B) LIMITATION.—The amount of the unused credit which may be added under subparagraph (A) for any preceding or succeeding taxable year shall not exceed the amount by which the limitation provided under paragraph (1)(A) for such taxable year exceeds the sum of—

[(i) the credit allowable under this section for such taxable year, and

[(ii) the amounts which, by reason of this paragraph, are added to the amount allowable for such taxable year and which are attributable to taxable years preceding the unused credit year.

[(3) CERTAIN REGULATED COMPANIES.—No credit attributable to compensation taken into account for the ratemaking purposes involved shall be allowed under this section to a taxpayer if—

[(A) the taxpayer's cost of service for ratemaking purposes or in its regulated books of account is reduced by reason of any portion of such credit which results from the transfer of employer securities or cash to a tax credit employee stock ownership plan which meets the requirements of section 409A;

[(B) the base to which the taxpayer's rate of return for ratemaking purposes is applied is reduced by reason of any portion of such credit which results from a transfer described in subparagraph (A) to such employee stock ownership plan; or

[(C) any portion of the amount of such credit which results from a transfer described in subparagraph (A) to such employee stock ownership plan is treated for ratemaking purposes in any way other than as though it had been contributed by the taxpayer's common shareholders.

Under regulations prescribed by the Secretary, rules similar to the rules of paragraphs (4) and (7) of section 46(f) shall apply for purposes of the preceding sentence.]

(b) CERTAIN REGULATED COMPANIES.—No credit attributable to compensation taken into account for the ratemaking purposes involved shall be determined under this section with respect to a taxpayer if—

(1) the taxpayer's cost of service for ratemaking purposes or in its regulated books of account is reduced by reason of any portion of such credit which results from the transfer of employer securities or cash to a tax credit employee stock ownership plan which meets the requirements of section 409;

(2) the base to which the taxpayer's rate of return for ratemaking purposes is applied is reduced by reason of any portion of such credit which results from a transfer described in paragraph (1) to such employee stock ownership plan; or

(3) any portion of the amount of such credit which results from a transfer described in paragraph (1) to such employee stock ownership plan is treated for ratemaking purposes in any way other than as though it had been contributed by the taxpayer's common shareholders.

Under regulations prescribed by the Secretary, rules similar to the rules of paragraphs (4) and (7) of secion 46(f) shall apply for purposes of the preceding sentence.

(c) DEFINITIONS AND SPECIAL RULES.—

(1) REQUIREMENTS FOR CORPORATION.—A Corporation meets the requirements of this paragraph if it—

(A) establishes a plan—

(i) which meets the requirements of section [409A,] *409,* and

(ii) under which no more than one-third of the employer contributions for the taxable year are allocated to the group of employees consisting of—

(I) officers,

(II) shareholders owning more than 10 percent of the employer's stock (within the meaning of section 415(c)(6)(B)(iv)), or

(III) employees described in section 415(c)(6)(B)(iii), and

(B) agrees, as a condition for the allowance of the credit allowed by this subsection—

(i) to make transfers of employer securities to a tax credit employee stock ownership plan maintained by the corporation having an aggregate value of not more than the applicable percentage for the taxable year (determined under subsection (a)(2)) of the amount of the aggregate compensation (within the meaning of section 415(c)(3)) paid or accrued by the corporation during the taxable year, and

(ii) to make such transfers at the times prescribed in paragraph (2).

(2) TIMES FOR MAKING TRANSFERS.—The transfers required under paragraph (1)(B) shall be made not later than 30 days after the due date (including extensions) for filing the return for the taxable year.

(3) ADJUSTMENTS TO CREDIT.—If the credit [allowed] *determined* under this section is reduced by a final determination, the employer may reduce the amount required to be transferred to the tax credit employee stock ownership plan under paragraph (1)(B) for the taxable year in which the final determination occurs or any succeeding taxable year by an amount equal to such reduction to the extent such reduction is not taken into account in any deduction allowed under section 404(i)(2).

(4) CERTAIN CONTRIBUTIONS OF CASH TREATED AS CONTRIBUTIONS OF EMPLOYER SECURITIES.—For purposes of this section, a

transfer of cash shall be treated as a transfer of employer securities if the cash is, under the tax credit employee stock ownership plan, used within 30 days to purchase employer securities.

(5) **Disallowance of deduction.**—Except as provided in section 404(i), no deduction shall be allowed under section 162, 212, or 404 for amounts required to be transferred to a tax credit employee stock ownership plan under this section.

(6) **Employer securities.**—For purposes of this section, the term "employer securities" has the meaning given such term in section [409A(1).] *409(l).*

(7) **Value.**—For purposes of this section, the term "value" means—

(A) in the case of securities listed on a national exchange, the average of closing prices of such securities for the 20 consecutive trading days immediately preceding the date of which the securities are contributed to the plan, or

(B) in the case of securities not listed on a national exchange, the fair market value as determined in good faith and in accordance with regulations prescribed by the Secretary.

* * * * * * *

[SEC. 44. PURCHASE OF NEW PRINCIPAL RESIDENCE.

[(a) **General Rule.**—In the case of an individual there is allowed, as a credit against the tax imposed by this chapter for the taxable year, an amount equal to 5 percent of the purchase price of a new principal residence purchased or constructed by the taxpayer.

[(b) **Limitations.**—

[(1) **Maximum credit.**—The credit allowed under subsection (a) may not exceed $2,000.

[(2) **Limitation to one residence.**—The credit under this section shall be allowed with respect to only one residence of the taxpayer.

[(3) **Married individuals.**—In the case of a husband and wife who file a joint return under section 6013, the amount specified under paragraph (1) shall apply to the joint return. In the case of a married individual filing a separate return, paragraph (1) shall be applied by substituting "$1,000" for "$2,000".

[(4) **Certain other taxpayers.**—In the case of individuals to whom paragraph (3) does not apply who together purchase the same new principal residence for use as their principal residence, the amount of the credit allowed under subsection (a) shall be allocated among such individuals as prescribed by the Secretary, but the sum of the amounts allowed to such individuals shall not exceed $2,000 with respect to that residence.

[(5) **Application with other credits.**—The credit allowed by subsection (a) shall not exceed the amount of the tax imposed by this chapter for the taxable year, reduced by the sum of the credits allowable under sections 33, 37, 38, 40, 41, and 42.

[(c) **Definitions.**—For purposes of this section—

[(1) **New principal residence.**—The term "new principal residence" means a principal residence (within the meaning of section 1034), the original use of which commences with the taxpayer, and includes, without being limited to, a single family structure, a residential unit in a condominium or cooperative housing project, and a mobile home.

[(2) PURCHASE PRICE.—The term "purchase price" means the adjusted basis of the new principal residence on the date of the acquisition thereof.

[(3) PURCHASE.—The term "purchase" means any acquisition of property, but only if—

[(A) the property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of losses under section 267 or 707(b) (but, in applying section 267(b) and (c) for purposes of this section, paragraph (4) of section 267(c) shall be treated as providing that the family of an individual shall include only his spouse, ancestors, and lineal descendants), and

[(B) the basis of the property in the hands of the person acquiring it is not determined—

[(i) in whole or in part by reference to the adjusted basis of such property in the hands of the person from whom acquired, or

[(ii) under section 1014(a) (relating to property acquired from a decedent).

[(d) RECAPTURE FOR CERTAIN DISPOSITIONS.—

[(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), if the taxpayer disposes of property with respect to the purchase of which a credit was allowed under subsection (a) at any time within 36 months after the date on which he acquired it (or, in the case of construction by the taxpayer, on the day on which he first occupied it) as his principal residence, then the tax imposed under this chapter for the taxable year in which terminates the replacement period under paragraph (2) with respect to the disposition is increased by an amount equal to the amount allowed as a credit for the purchase of such property.]

[(2) ACQUISITION OF NEW RESIDENCE.—If, in connection with a disposition described in paragraph (1) and within the applicable period prescribed in section 1034, the taxpayer purchases or constructs a new principal residence, then the provisions of paragraph (1) shall not apply and the tax imposed by this chapter for the taxable year following the taxable year during which disposition occurs is increased by an amount which bears the same ratio to the amount allowed as a credit for the purchase of the old residence as (A) the adjusted sales price of the old residence (within the meaning of section 1034), reduced (but not below zero) by the taxpayer's cost of purchasing the new residence (within the meaning of such section) bears to (B) the adjusted sales price of the old residence.

[(3) DEATH OF OWNER; CASUALTY LOSS; INVOLUNTARY CONVERSION; ETC.—The provisions of paragraph (1) do not apply to—

[(A) a disposition of a residence made on account of the death of any individual having a legal or equitable interest therein occurring during the 36 month period to which reference is made under such paragraph, [(B) a disposition of the old residence if it is substantially or completely destroyed by a casualty described in section 165(c)(3) or compulsorily and involuntarily converted (within the meaning of section 1033(a)), or

[(C) a disposition pursuant to a settlement in a divorce or legal separation proceeding where the other spouse retains the residence as principal residence.

[(e) PROPERTY TO WHICH SECTION APPLIES.—

[(1) IN GENERAL.—The provisions of this section apply to a new principal residence—

[(A) the construction of which began before March 26, 1975,

[(B) which is acquired and occupied by the taxpayer after March 12, 1975, and before January 1, 1977, and

[(C) if not constructed by the taxpayer, which was acquired by the taxpayer under a binding contract entered into by the taxpayer before January 1, 1976.

[(2) SELF-CONSTRUCTED PROPERTY BEGUN BEFORE MARCH 13, 1975.—In the case of property the construction of which was begun by the taxpayer before March 13, 1975, only that portion of the basis of such property properly allocable to construction after March 12, 1975, shall be taken into account in determining the amount of the credit allowable under subsection (a).

[(3) BINDING CONTRACT.—For purposes of this subsection, a contract for the purchase of a residence which is conditioned upon the purchaser's obtaining a loan for the purchase of the residence (including conditions as to the amount or interest rate of such loan) is not considered non-binding on account of that condition.

[(4) CERTIFICATION MUST BE ATTACHED TO RETURN.—This section does not apply to any residence (other than a residence constructed by the taxpayer) unless there is attached to the return of tax on which the credit is claimed a written certification (which may be in any form) signed by the seller of such residence that—

[(A) construction of the residence began before March 26, 1975, and

[(B) the purchase price of the residence is the lowest price at which the residence was offered for sale after February 28, 1975.

For purposes of this paragraph, a written certification filed by a taxpayer is sufficient whether or not it is on a form prescribed by the Secretary so long as such certification is signed by the seller and contains the information required under this paragraph.]

[SEC. 44B. CREDIT FOR EMPLOYMENT OF CERTAIN NEW EMPLOYEES.

[(a) GENERAL RULE.—At the election of the taxpayer, there shall be allowed, as a credit against the tax imposed by this chapter, the amount determined under subpart D of this part.

[(b) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section and subpart D.

[(c) ELECTION.—

[(1) TIME FOR MAKING ELECTION.—An election under subsection (a) for any taxable year may be made (or revoked) at any time before the expiration of the 3-year period beginning on the last date prescribed by law for filing the return for such taxable year (determined without regard to extension).

[(2) MANNER OF MAKING ELECTION.—Any election under subsection (a) (or revocation thereof) shall be made in such manner as the Secretary may by regulations prescribe.]

Subpart [B]*E*—Rules for Computing Credit for Investment in Certain Depreciable Property

Sec. 46. Amount of credit.
Sec. 47. Certain dispositions, etc., of section 38 property.
Sec. 48. Definitions; special rules.
Sec. 49. Termination for period beginning April 19, 1969, and ending during 1971.
Sec. 50. Restoration of credit.

SEC. 46. AMOUNT OF CREDIT.

[(a) GENERAL RULE.—

[(1) FIRST-IN-FIRST-OUT RULE.—The amount of the credit allowed by section 39 for the taxable year shall be an amount equal to the sum of—

[(A) the investment credit carryovers carried to such taxable year,

[(B) the amount of the credit determined under paragraph (2) for such taxable year, plus

[(C) the investment credit carrybacks carried to such taxable year.

[(2) AMOUNT OF CREDIT.—

[(A) IN GENERAL.—The amount of the credit determined under this paragraph for the taxable year shall be an amount equal to the sum of the following percentages of the qualified investment (as determined under subsections (c) and (d)):

[(i) the regular percentage,

[(ii) in the case of energy property, the energy percentage,

[(iii) the employee plan percentage, and

[(iv) in the case of that portion of the basis of any property which is attributable to qualified rehabilitation expenditures, the rehabilitation precentage.

[(B) REGULAR PERCENTAGE.—For purposes of this paragraph, the regular percentage is 10 percent.

[(C) ENERGY PERCENTAGE.—For purposes of this paragraph—

[(i) IN GENERAL.—The energy precentage shall be determined in accordance with the following table:

Column A—Description	*Column B—Percentage*	*Column C—Period*	
In the case of:	*The energy percentage is:*	*For the period:*	
		Beginning on:	*And ending on:*
I. GENERAL RULE.—Property not described in any of the following provisions of this column.	10 percent	Oct. 1, 1978	Dec. 31, 1982.
II. SOLAR, WIND, OR GEOTHERMAL PROPERTY.—Property described in section 48(l)(2)(A)(ii) or 48(l)(3)(A)(viii).	A. 10 percent B. 15 percent	Oct. 1, 1978 Jan. 1, 1980	Dec. 31, 1979. Dec. 31, 1985.
III. OCEAN THERMAL PROPERTY.—Property described in section 48(l)(3)(A)(ix).	15 percent	Jan. 1, 1980	Dec. 31, 1985.
IV. QUALIFIED HYDROELECTRIC GENERATING PROPERTY.—Property described in section 48(l)(2)(A)(vii).	11 percent	Jan. 1, 1980	Dec. 31, 1985.
V. QUALIFIED INTERCITY BUSES.—Property described in section 48(l)(2)(A)(ix).	10 percent	Jan. 1, 1980	Dec. 31, 1985.
VI. BIOMASS PROPERTY.—Property described in section 48(l)(15).	10 percent	Oct. 1, 1978	Dec. 31, 1985.
VII. CHLOR-ALKALI ELECTROLYTIC CELLS.—Property described in section 48(l)(5)(M).	10 percent	Jan. 1, 1980	Dec. 31, 1982.

[(ii) PERIODS FOR WHICH PERCENTAGE NOT SPECIFIED.—In the case of any energy property, the energy percentage shall be zero for any period for which an energy percentage is not specified for such property under clause (i) (as modified by clauses (iii) and (iv)).

[(iii) LONGER PERIOD FOR CERTAIN LONG-TERM PROJECTS.—For the purpose of applying the energy percentage contained in subclause (I) of clause (i) with respect to property which is a part of a project with a normal construction period of 2 years or more (within the meaning of section 46(d)(2)(A)(i)), "December 31, 1990" shall be substituted for "December 31, 1982" if—

[(I) before January 1, 1983, all engineering studies in connection with the commencement of the construction of the project have been completed and all environmental and construction permits required under Federal, State, or local law in connection with the commencement of the construction of the project have been applied for, and

[(II) before January 1, 1986, the taxpayer has entered into binding contracts for the acquistion, construction, reconstruction, or erection of equipment specially designed for the project and the aggregate cost to the taxpayer of that equipment is at least 50 percent of the reasonably estimated cost for all such equipment which is to be placed in service as part of the project upon its completion.

[(iv) LONGER PERIOD FOR CERTAIN HYDROELECTRIC GENERATING PROPERTY.—If an application has been docketed by the Federal Energy Regulatory Commission before January 1, 1986, with respect to the installation of any qualified hydroelectric generating property, for purposes of applying the energy percentage contained in subclause (IV) of clause (i) with respect to such property, "December 31, 1988" shall be substituted for "December 31, 1985."

[(D) SPECIAL RULE FOR CERTAIN ENERGY PROPERTY.—For purposes of this paragraph, the regular percentage shall not apply to any energy property which, but for section 48(l)(1), would not be section 38 property. In the case of any qualified hydroelectric generating property which is a fish passageway, the preceding sentence shall not apply to any period after 1979 for which the energy percentage for such property is greater than zero.

[(E) EMPLOYEE PLAN PERCENTAGE.—For purposes of this paragraph, the employee plan percentage is—

[(i) with respect to the period beginnning on January 21, 1975, and ending on December 31, 1982, 1 percent,

[(ii) with respect to the period beginning on January 1, 1977, and ending on December 31, 1982, an additional percentage (not in excess of ½ of 1 percent) which results in an amount equal to the amount determined under section 48(n)(1)(B), and

[(iii) with respect to any period beginning after December 31, 1982, zero.

This subparagraph shall apply to a corporation only if it meets the requirements of section 409A and only if it elects (at such time, in such form, and in such manner as the Secretary prescribes) to have this subparagraph apply.

[(F) REHABILITATION PERCENTAGE.—For purposes of this paragraph—

[(i) IN GENERAL.—

In the case of qualified rehabilitation expenditures with respect to a:	The rehabilitation percentage is:
30-year building	15
40-year building	20
Certified historic structure	25.

[(ii) REGULAR AND ENERGY PERCENTAGES NOT TO APPLY.—The regular percentage and the energy percentage shall not apply to that portion of the basis of any property which is attributable to qualified rehabilitation expenditures.

[(iii) DEFINITIONS.—

[(I) 30-YEAR BUILDING.—The term "30-year building" means a qualified rehabilitated building other than a 40-year building and other than a certified historic structure.

[(II) 40-YEAR BUILDING.—The term "40-year building" means a qualified rehabilitated building (other than a certified historic structure) which would meet the requirements of section 48(g)(1)(B) if "40" were substituted for "30" each place it appears in subparagraph (B) thereof.

[(III) Certified historic structure.—The term "certified historic structure" means a qualified rehabilitated building which meets the requirements of section 48(g)(3).

[(3) Limitation based on amount of tax.—Notwithstanding paragraph (1), the credit allowed by section 38 for the taxable year shall not exceed—

[(A) so much of the liability for tax for the taxable year as does not exceed $25,000, plus

[(B) 85 percent of so much of the liability for tax for the taxable year as exceeds $25,000.

[(4) Liability for tax.—For purposes of paragraph (3), the liability for tax for the taxable year shall be the tax imposed by this chapter for such year, reduced by the sum of the credits allowable under—

[(A) section 33 (relating to foreign tax credit), and

[(B) section 37 (relating to credit for the elderly and the permanently and totally disabled).

For purposes of this paragraph, any tax imposed for the taxable year by section 56 (relating to corporate minimum tax), section 72(m)(5)(B) (relating to 10 percent tax on premature distributions to owner-employees), section 72(q)(1) (relating to 5-percent tax on premature distributions under annuity contracts), section 402(e) (relating to tax on lump sum distributions), section 408(f) (relating to additional tax on income from certain retirement accounts), section 531 (relating to accumulated earnings tax), section 541 (relating to personal holding company tax), or section 1374 (relating to tax on certain capital gains of S corporations), and any additional tax imposed for the taxable year by section 1351(d)(1) (relating to recoveries of foreign expropriation losses), shall not be considered tax imposed by this chapter for such year.

[(5) Married individuals.—In the case of a husband or wife who files a separate return, the amount specified under subparagraphs (A) and (B) of paragraph (3) shall be $12,500 in lieu of $25,000. This paragraph shall not apply if the spouse of the taxpayer has no qualified investment for, and no unused credit carryback or carryover to, the taxable year of such spouse which ends within or with the taxpayer's taxable year.

[(6) Controlled groups.—In the case of a controlled group, the $25,000 amount specified under paragraph (3) shall be reduced for each component member of such group by apportioning $25,000 among the component members of such group in such manner as the Secretary shall by regulations prescribe. For purposes of the preceding sentence, the term "controlled group" has the meaning assigned to such term by section 1563(a).

[(7) Special rules in the case of energy property.—Under regulations prescribed by the Secretary—

[(A) In general.—This subsection and subsection (b) shall be applied separately—

[(i) first with respect to so much of the credit allowed by section 38 as is not attributable to the energy percentage, and [(ii) second with respect to so much of the credit allowed by section 38 as is attributable to the application of the energy percentage to energy property.

[(B) RULES OF APPLICATION FOR ENERGY PROPERTY.—In applying this subsection and subsection (b) for taxable years ending after September 30, 1978, with respect to so much of the credit allowed by section 38 as is described in subparagraph (A)(ii)—

[(i) paragraph (3)(B) shall be applied by substituting "100 percent" for "85 percent," and

[(ii) the liability for tax shall be the amount determined under paragraph (4) reduced by so much of the credit allowed by section 38 as is described in subparagraph (A)(i).]

[(b) CARRYBACK AND CARRYOVER OF UNUSED CREDITS.—

[(1) IN GENERAL.—If the sum of the amount of the investment credit carryovers to the taxable year under subsection (a)(1)(A) plus the amount determined under subsection (a)(1)(B) for the taxable year exceeds the amount of the limitation imposed by subsection (a)(3) for such taxable year (hereinafter in this subsection referred to as the "unused credit year"), such excess attributable to the amount determined under subsection (a)(1)(B) shall be—

[(A) an investment credit carryback to each of the 3 taxable years proceeding the unused credit year, and

[(B) an investment credit carryover to each of the 7 taxable years following the unused credit year,

and, subject to the limitations imposed by paragraphs (2) and (3), shall be taken into account under the provisions of subsection (a)(1) in the manner provided in such subsection. The entire amount of the unused credit for an unused credit year shall be carried to the earliest of the 10 taxable years to which (by reason of subparagraphs (A) and (B)) such credit may be carried and then to each of the other 9 taxable years to the extent, because of the limitations imposed by paragraphs (2) and (3), such unused credit may not be taken into account under subsection (a)(1) for a prior taxable year to which such unused credit may be carried. In the case of an unused credit for an unused credit year ending before January 1, 1971, which is an investment credit carryover to a taxable year beginning after December 31, 1970 (determined without regard to this sentence), this paragraph shall be applied—

[(C) by substituting "10 taxable years" for "7 taxable years" in subparagraph (B), and by substituting "13 taxable years" for "10 taxable years," and "12 taxable years" for "9 taxable years" in the preceding sentence, and

[(D) by carrying such an investment credit carryover to a later taxable year (than the taxable year to which it would, but for this subparagraph be carried) to which it may be carried if, because of the amendments made by section 802(b)(2) of the Tax Reform Act of 1976, carrying such carryover to the taxable year to which it would, but for this subparagraph, be carried would cause a portion of an unused credit from an unused credit year ending after December 31, 1970 to expire.]

In the case of an unused credit for an unused credit year ending after December 31, 1973, this paragrah shall be applied by substituting "15" for "7" in subparagraph (B), and by substituting "18" for "10", and "17" for "9" in the second sentence.

[(2) Limitation on carrybacks.—The amount of the unused credit which may be taken into account under subsection (a)(1) for any preceding taxable year shall not exceed the amount by which the limitation imposed by subsection (a)(3) for such taxable year exceeds the sum of—

[(A) the amounts determined under subparagraphs (A) and (B) of subsection (a)(1) for such taxable year, plus

[(B) the amounts which (by reason of this subsection) are carried back to such taxable year and are attributable to taxable years preceding the unused credit year.

[(3) Limitation on carryovers.—The amount of the unused credit which may be taken into account under subsection (a)(1)(A) for any succeeding taxable year shall not exceed the amount by which the limitation imposed by subsection (a)(3) for such taxable year exceeds the sum of the amounts which, by reason of this subsection, are carried to such taxable year and are attributable to taxable years preceding the unused credit year.]

(a) Amount of Investment Credit.—For purposes of section 38, the amount of the investment credit determined under this section for any taxable year shall be an amount equal to the sum of the following percentages of the qualified investment (as determined under subsections (c) and (d)):

(1) the regular percentage,

(2) in the case of energy property, the energy percentage, and

(3) in the case of that portion of the basis of any property which is attributable to qualified rehabilitation expenditures, the rehabilitation percentage.

(b) Determination of Percentages.—For purposes of subsection (a).—

(1) Regular percentage.—The regular percentage is 10 percent.

(2) Energy percentage.—

(A) In general.—The energy percentage shall be determined in accordance with the following table:

Column A—Description	*Column B—Percentage*	*Column C—Period*	
		For the period:	
In the case of:	*The energy percentage is:*	*Beginning on:*	*And ending on:*
(i) General Rule.—Property not described in any of the following provisions of this column	*10 percent ....*	*Oct. 1, 1978*	*Dec. 31, 1982.*
(ii) Solar Wind, or Geothermal Property.—Property described in section 48(l)(2)(A)(ii) or 48(l)(3)(A)(ii)	*A. 10 percent ....*	*Oct. 1, 1978*	*Dec. 31, 1979.*
	B. 15 percent	*Jan. 1, 1980*	*Dec. 31, 1985.*

Column A—Description	*Column B—Percentage*	*Column C—Period*	
In the case of:	*The energy percentage is:*	*For the period:*	
		Beginning on:	*And ending on:*
(iii) OCEAN THERMAL PROPERTY.—Property described in section 48(l)(3)(A)(ix)	*15 percent*	*Jan. 1, 1980*	*Dec. 31, 1985.*
(iv) QUALIFIED HYDROELECTRIC GENERATING PROPERTY.—Property described in section 48(l)(2)(A)(vii)	*11 percent*	*Jan. 1, 1980*	*Dec. 31, 1985.*
(v) QUALIFIED INTERCITY BUSES.—Property described in Section 48(l)(2)(A)(ix)	*10 percent*	*Jan. 1, 1980*	*Dec. 31, 1985.*
(vi) BIOMASS PROPERTY.—Property described in section 48(l)(15)	*10 percent*	*Oct. 1, 1978*	*Dec. 31, 1985.*
(vii) CHLOR-ALKALI ELECTROLYTIC CELLS.—Property described in section 48(l)(5)(M)	*10 percent*	*Jan. 1, 1980*	*Dec. 31, 1982.*

(B) PERIODS FOR WHICH PERCENTAGE NOT SPECIFIED.—In the case of any energy property, the energy percentage shall be zero for any period for which an energy percentage is not specified for such property under subparagraph (A) (as modified by subparagraphs (C) and (D)).

(C) LONGER PERIOD FOR CERTAIN LONG-TERM PROJECTS.—For the purpose of applying the energy percentage contained in clause (i) of subparagraph (a) with respect to property which is part of a project with a normal construction period of 2 years or more (within the meaning of section 46(d)(2)(A)(i)), "December 31, 1990" shall be substituted for "December 31, 1982" if—

(i) before January 1, 1983, all engineering studies in connection with the commencement of the construction of the project have been completed and all environmental and construction permits required under Federal, State, or local law in connection with the commencement of the construction of the project have been applied for, and

(ii) before January 1, 1986, the taxpayer has entered into binding contracts for the acquisition, construction, reconstruction, or erection of equipment specially designed for the project and the aggregate cost to the taxpayer of that equipment is at least 50 percent of the reasonably estimated cost for all such equipment which is to be placed in service as part of the project upon its completion.

(D) LONGER PERIOD FOR CERTAIN HYDROELECTRIC GENERATING PROPERTY.—If an application has been docketed by the Federal Energy Regulatory Commission before January 1, 1986, with respect to the installation of any qualified hydroelectric generating property, for purposes of applying the energy percentage contained in clause (iv) of subparagraph (A) with respect to such property, "December 31, 1988" shall be substituted for "December 31, 1985".

(3) SPECIAL RULE FOR CERTAIN ENERGY PROPERTY.—The regular percentage shall not apply to any energy property which, but for section 48(l)(1), would not be section 38 property. In the case of any qualified hydroelectric generating property which is a fish passageway, the preceding sentence shall not apply to any period after 1979 for which the energy percentage for such property is greater than zero.

Rehabilitation percentage.

(A) In general.—

In the case of qualified rehabilitation expenditures with respect to a:	*The rehabilitation percentage is:*
30-year building	*15*
40-year building	*20*
Certified historic structure	*25.*

(B) REGULAR AND ENERGY PERCENTAGES NOT TO APPLY.—The regular percentages and the energy percentages shall not apply to that portion of the basis of any property which is attributable to qualified rehabilitation expenditures.

(C) DEFINITIONS.—For purposes of this paragraph—

(i) 30-YEAR BUILDING.—The term "30-year building" means a qualified rehabilitated building other than a 40-year building and other than a certified historic structure.

(ii) 40-YEAR BUILDING.—The term "40-year building" means a qualified rehabilitated building (other than a certified historic structure) which would meet the requirements of section 48(g)(B) if "40" were substituted for "30" each place it appears in subparagraph (B) thereof.

(iii) CERTIFIED HISTORIC STRUCTURE.—The term "certified historic structure" means a qualified rehabilitated building which meets the requirements of section 48(g)(3).

(c) QUALIFIED INVESTMENT.—

(1) IN GENERAL.—For purposes of this subpart, the term "qualified investment" means, with respect to any taxable year, the aggregate of—

(A) the applicable percentage of the basis of each new section 38 property (as defined in section 48(b)) placed in service by the taxpayer during such taxable year, plus

(B) the applicable percentage of the cost of each used section 38 property (as defined in section 48(c)(1)) placed in service by the taxpayer during such taxable year.

(2) APPLICABLE PERCENTAGE IN CERTAIN CASES.—Except as provided in paragraphs (3), (6), and (7), the applicable percentage for purposes of paragraph (1), for any property shall be determined under the following table:

If the useful life is—	The applicable percentage is—
3 years or more but less than 5 years	33⅓
5 years or more but less than 7 years	66⅔
7 years or more	100

For purposes of this subpart, the useful life of any property shall be the useful life used in computing the allowance for depreciation under section 167 for the taxable year in which the property is placed in service.

(3) Public utility property.—

(A) To the extent that the credit allowed by section 38 with respect to any public utility property is determined at the rate of 7 percent, in the case of any property which is public utility property, the amount of the qualified investment shall be 4/7 of the amount determined under paragraph (1). The preceding sentence shall not apply for purposes of applying the energy percentage.

(B) For purposes of subparagraph (A), the term "public utility property" means property used predominantly in the trade or business of the furnishing or sale of—

(i) electrical energy, water, or sewage disposal services,

(ii) gas through a local distribution system, or

(iii) telephone service, telegraph service by means of domestic telegraph operations (as defined in section 222(a)(5) of the Communications Act of 1934, as amended; 47 U.S.C. 222(a)(5)), or other communication services (other than international telegraph service),

if the rates for such furnishing or sale, as the case may be, have been established or approved by a State or political subdivision thereof, by an agency or instrumentality of the United States, or by a public service or public utility commission or other similar body of any State or political subdivision thereof. Such term also means communication property of the type used by persons engaged in providing telephone or microwave communication services to which clause (iii) applies, if such property is used predominantly for communication purposes.

(C) In the case of any interest in a submarine cable circuit used to furnish telegraph service between the United States and a point outside the United States of a taxpayer engaged in furnishing international telegraph service (if the rates for such furnishing have been established or approved by a governmental unit, agency, instrumentality, commission, or similar body described in subparagraph (B)), the qualified investment shall not exceed the qualified investment attributable to so much of the interest of the taxpayer in the circuit as does not exceed 50 percent of all interests in the circuit.

(4) Coordination with subsection (d).—The amount which would (but for this paragraph) be treated as qualified investment under this subsection with respect to any property shall be reduced (but not below zero) by any amount treated by the taxpayer or a predecessor of the taxpayer (or, in the case of a sale and leaseback described in section 47(a)(3)(C), by the lessee) as qualified investment with respect to such property under subsection (d), to the extent the amount so treated has not been required to be recaptured by reason of section 47(a)(3).

(5) Applicable percentage in the case of certain pollution control facilities.—

(A) IN GENERAL.—Notwithstanding paragraph (2), in the case of property—

(i) with respect to which an election under section 169 applies, and

(ii) the useful life of which (determined without regard to section 169) is not less than 5 years,

100 percent shall be the applicable percentage for purposes of applying paragraph (1) with respect to so much of the adjusted basis of the property as (after the application of section 169(f)) constitutes the amortizable basis for purposes of section 169.

(B) SPECIAL RULE WHERE PROPERTY IS FINANCED BY INDUSTRIAL DEVELOPMENT BONDS.—To the extent that any property is financed by the proceeds of an industrial development bond (within the meaning of section 103(b)(2)) the interest on which is exempt from tax under section 103, subparagraph (A) shall be applied by substituting "50 percent" for "100 percent." This subparagraph shall not apply for purposes of applying the energy percentage.

(6) SPECIAL RULE FOR COMMUTER HIGHWAY VEHICLES.—

(A) IN GENERAL.—Notwithstanding paragraph (2) or (3), in the case of a commuter highway vehicle the useful life of which is 3 years or more, or which is recovery property (within the meaning of section 168), the applicable percentage for purposes of paragraph (1) shall be 100 percent.

(B) DEFINITION OF COMMUTER HIGHWAY VEHICLE.—For purposes of subparagraph (A), the term "commuter highway vehicle" means a highway vehicle—

(i) the seating capacity of which is at least 8 adults (not including the driver),

(ii) at least 80 percent of the mileage use of which can reasonably be expected to be (I) for purposes of transporting the taxpayer's employees between their residences and their place of employment, and (II) on trips during which the number of employees transported for such purposes is at least one-half of the adult seating capacity of such vehicle (not including the driver),

(iii) which is acquired by the taxpayer on or after the date of the enactment of the Energy Tax Act of 1978, and placed in service by the taxpayer before January 1, 1986, and

(iv) with respect to which the taxpayer makes an election under this paragraph on his return for the taxable year in which such vehicle is placed in service.

(7) APPLICABLE PERCENTAGE FOR RECOVERY PROPERTY.—Notwithstanding paragraph (2), the applicable percentage for purposes of paragraph (1) shall be—

(A) in the case of property other than 3-year property (within the meaning of section 168(c)), 100 percent, and

(B) in the case of 3-year property (within the meaning of section 168(c)), 60 percent.

For purposes of subparagraph (A), RRB replacement property (within the meaning of section 168(f)(3)(B)) shall be treated as property which is not 3-year property.

[(8) LIMITATION TO AMOUNT AT RISK.—

[(A) IN GENERAL.—In the case of new or used section 38 property which—

[(i) is placed in service during the taxable year by a taxpayer described in section 465(a)(1), and

[(ii) is used in connection with an activity with respect to which any loss is subject to limitation under section 465,

the basis of such property for purposes of paragraph (1) shall not exceed the amount the taxpayer is at risk with respect to such property as of the close of such taxable year.

[(B) AMOUNT AT RISK.—

[(i) IN GENERAL.—Except as provided in clause (ii), the term "at risk" has the same meaning given such term by section 465(b) (without regard to paragraph (5) thereof).

[(ii) CERTAIN FINANCING.—In the case of a taxpayer who at all times is at risk (determined without regard to this clause) in an amount equal to at least 20 percent of the basis (determined under section 168(d)(1)(A)(i)) of property described in subparagraph (A) and who acquired such property from a person who is not a related person, such taxpayer shall for purposes of this paragraph be considered at risk with respect to any amount borrowed in connection with such property (other than convertible debt) to the extent that such amount—

[(I) is borrowed from a qualified person, or

[(II) represents a loan from any Federal, State, or local government or instrumentality thereof, or is guaranteed by, any Federal, State, or local government.

[(C) SPECIAL RULE FOR PARTNERSHIPS AND SUBCHAPTER CORPORATIONS.—In the case of any partnership or S corporation, any amount treated as at risk under subparagraph (B)(ii) shall be allocated among the partners or shareholders (and treated as an amount at risk with respect to such persons) in the same manner as the credit allowable by section 38.

[(D) QUALIFIED PERSON.—For purposes of this paragaph, the term "qualified person" means any person—

[(i) which—

[(I) is an institution described in clause (i), (ii), or (iii) of subparagraph (A) or subparagraph (B) of subsection 128(c)(2) or an insurance company to which subchapter L applies, or

[(II) is a pension trust qualified under section 401(a) or a person not described in subclause (I) and which is actively and regularly engaged in the business of lending money, [(ii) which is not a related person with respect to the taxpayer,

[(iii) which is not a person who receives a fee with respect to the taxpayer's investment in property described in subparagraph (A) or a related person to such person, and

[(iv) which is not a person from which the taxpayer acquired the property described in subparagraph (A) or a related person to such person.

[(E) RELATED PERSON.—For purposes of this paragraph, the term "related person" has the same meaning as such term is used in section 168(e)(4), except that in applying section 168(e)(4)(D)(i) in the case of a person described in subparagraph (D)(i)(II) of this paragraph, sections 267(b) and 707(b)(1) shall be applied by substituting "0 percent" for "50 percent".]

(8) CERTAIN NONRECOURSE FINANCING EXCLUDED FROM CREDIT BASE.—

(A) LIMITATION.—The credit base of any property to which this paragraph applies shall be reduced by the nonqualified nonrecourse financing with respect to such property (as of the close of the taxable year in which placed in service).

(B) PROPERTY TO WHICH PARAGRAPH APPLIES.—This paragraph applies to any property which—

(i) is placed in service during the taxable year by a taxpayer described in section 465(a)(1), and

(ii) is used in connection with an activity with respect to which any loss is subject to limitation under section 465.

(C) CREDIT BASE DEFINED.—For purposes of this paragraph, the term "credit base" means—

(i) in the case of new section 38 property, the basis of the property, or

(ii) in the case of used section 38 propoerty, the cost of such property.

(D) NONQUALIFIED NONRECOURSE FINANCING.—

(i) IN GENERAL.—For purposes of this paragraph and paragraph (9), the term "nonqualified nonrecourse financing" means any nonrecourse financing which is not qualified commercial financing.

(ii) QUALIFIED COMMERCIAL FINANCING.—For purposes of this paragraph, the term "qualified commercial financing" means any financing with respect to any property if—

(I) such property is acquired by the taxpayer from a person who is not a related person,

(II) the amount of the nonrecourse financing with respect to such property does not exceed 80 percent of the credit base of such property, and

(III) such financing is borrowed from a qualified person or represents a loan from any Federal, State, or local government or instrumentality

thereof, or is guaranteed by any Federal, State, or local government.

Such term shall not include any covertible debt.

(iii) NONRECOURSE FINANCING.—For purposes of this subparagraph, the term "nonrecourse financing" includes—

(I) any amount with respect to which the taxpayer is protected against loss through guarantees, stop-loss agreements, or other similar arrangements, and

(II) except to the extent provided in regulations, any amount borrowed from a person who has an interest (other than as a creditor) in the activity in which the property is used or from a related person to a person (other than the taxpayers) having such an interest.

(iv) QUALIFIED PERSON.—For purposes of this paragraph, the term "qualified" person means any person which is actively and regularly engaged in the business of lending money and which is not—

(I) a related person with respect to the taxpayer,

(II) a person from which the taxpayer acquired the property (or a related person to such person), or

(III) a person who receives a fee with respect to the taxpayer's investment in the property (or a related person to such person).

(v) RELATED PERSON.—For purposes of clause (i), the term "related person" has the meaning given such term by section 168(e)(4). Except as otherwise provided in regulations prescribed by the Secretary, the determination of whether a person is a related person shall be made as of the close of the taxable year in which the property is placed in service.

(E) APPLICATION TO PARTNERSHIPS AND S CORPORATIONS.—For purposes of this paragraph and paragraph (9)—

(i) IN GENERAL.—Except as otherwise provided in this subparagraph, in the case of any partnership or S corporation, the determination of whether a partner's or shareholder's allocable share of any financing is nonqualified nonrecourse financing shall be made at the partner or shareholder level.

(ii) SPECIAL RULE FOR CERTAIN RECOURSE FINANCING OF S CORPORATION.—A shareholder of an S corporation shall be treated as liable for his allocable share of any financing provided by a qualified person to such corporation if—

(I) such financing is recourse financing (determined at the corporate level), and

(II) such financing is provided with respect to qualified business property of such corporation.

(iii) QUALIFIED BUSINESS PROPERTY.—For purposes of clause (ii), the term "qualified business property" means any property if—

(I) such property is used by the corporation in the active conduct of a trade or business,

(II) during the entire 12-month period ending on the last day of the taxable year, such corporation had at least 3 full-time employees who were not owner-employees (as defined in section 465(c)(7)(E)(i)) and substantially all the services of whom were services directly related to such trade or business, and

(III) during the entire 12-month period ending on the last day of such taxable year, such corporation had at least 1 full-time employee substantially all of the services of whom were in the active management of the trade or business.

Such term shall not include any master sound recording or other tangible or intangible asset associated with literary, artistic, or musical properties.

(iv) DETERMINATION OF ALLOCABLE SHARE.—The determination of any partner's or shareholder's allocable share of any financing shall be made in the same manner as the credit allowable by section 38 with respect to such property.

(F) SPECIAL RULE FOR CERTAIN ENERGY PROPERTY.—

[(i) IN GENERAL.—The provisions of subparagraph (A) shall not apply to amounts borrowed with respect to qualified energy property (other than amounts described in subparagraph (B)).]

(i) IN GENERAL.—Subparagraph (A) shall not apply with respect to qualified energy property.

(ii) QUALIFIED ENERGY PROPERTY.—The term "qualified energy property" means energy property to which (but for this subparagraph) subparagraph (A) applies and—

(I) which is described in clause (iii).

(II) with respect to which the energy percentage determined under section [46(a)(2)(C)] *subsection (b)(2)* at the time such property is placed in service is greater than zero.

[(III) with respect to which the taxpayer , as of the close of the taxable year in which the property is placed in service, is at risk (within the meaning of section 465(b) without regard to paragraph (5) thereof) in an amount equal to a least 25 percent of the basis of the property, and]

(III) as of the close of the taxable year in which the property is placed in service, not more than 75 percent of the basis of such property is attributable to nonqualified nonrecourse financing, and

(IV) with respect to which any [nonrecourse financing (other than financing described in section 46(c)(8)(B)(ii] nonqualified nonrecourse financing) in connection with such property consists of a level payment loan.

For purposes of subclause (II), the energy percentage for property described in clause (iii)(V) shall be treated as being greater than zero during any period the energy percentage for property described in section 48(l)(14) is greater than zero.

(iii) Property to which this subparagraph applies.—Energy property is described in this clause if such property is—

(I) described in clause (ii), (iv), or (vii) or section 48(l)(2),

(II) described in section 48(l)(15),

(III) described in section 48(l)(3)(A)(iii) (but only to the extent such property is used for converting an alternate substance into alcohol for fuel purposes),

(IV) described in clause (i) of section 48(l)(2)(A) (but only to the extent such property is also described in section 48(l)(3)(A)(viii) or (ix)), or

(V) property comprising a system for using the same energy source for the sequential generation of electrical power, mechanical shaft power, or both, in combinations with steam, heat, or other forms of useful energy.

(iv) Level payment loan defined.—The term "level payment loan" means a loan in which each installment is substantially equal, a portion of each installment is attributable to the repayment of principal, and that portion is increased commensurate with decreases in the portion of the payment attributable to interest.

[(9) Subsequent increases in the taxpayers amount at risk with respect to the property.—

[(A) In general.—If, at the close of a taxable year subsequent to the year in which property was placed in service, the amount which the taxpayer has at risk with respect to such property has increased (as determined under subpargraph (B)), such increase shall be taken into account as additional qualified investment in such property in accordance with subparagraph (C).

[(B) Increases to be taken into account.—For purposes of subparagraphs (A) and (C), the amount which a taxpayer has at risk with respect to the property shall be treated as increased by the sum of the cash and the fair market value of property (other than property with respect to which the taxpayer is not at risk) used during the taxable year to reduce the principal sum of any amount with respect to which the taxpayer is not at risk.

[(C) Manner in which taken into account.—For purposes of determining the amount of credit allowed under section 38 and the amount of credit subject to the early disposition rules under section 47, an increase in a taxpayer's qualified investment in property (determined under subparagraph (B)) shall be deemed to be additional qualified investment made by the taxpayer in the year in which the property referred to in subparagraph (A) was first placed in service. However, the credit determined by taking into account the increase in qualified investment under this paragraph shall be considered a credit earned in the taxable year of such increase.]

(9) SUBSEQUENT DECREASES IN NONQUALIFIED NONRECOURSE FINANCING WITH RESPECT TO THE PROPERTY.—

(A) IN GENERAL.—If, at the close of a taxable year following the taxable year in which the property was placed in service, there is a net decrease in the amount of nonqualified nonrecourse financing with respect to such property (as determined under subparagraph (B)), such net decrease shall be taken into account as additional qualified investment in such property in accordance with subparagraph (C).

(B) DECREASES TO BE TAKEN INTO ACCOUNT.—For purposes of this paragraph, the amount of nonqualified nonrecourse financing with respect to the property shall be treated as decreased by the sum of—

(i) cash, and

(ii) the net fair market value of property (other than property so financed),

used during the taxable year to reduce the principal sum of such financing

(C) MANNER IN WHICH TAKEN INTO ACCOUNT.—

(i) CREDIT DETERMINED BY REFERENCE TO TAXABLE YEAR PROPERTY PLACED IN SERVICE.—For purposes of determining the amount of credit allowable under section 38 and the amount of credit subject to the early disposition rules under section 38 and the amount of credit subject to the early disposition rules under section 47, any increase in a taxpayer's qualified investment in property by reason of this paragraph shall be deemed to be additional qualified investment made by the taxpayer in the year in which the property referred to in subparagraph (A) was first placed in service.

(ii) CREDIT ALLOWED FOR YEAR OF DECREASE IN NONQUALIFIED NONRECOURSE FINANCING.—Any credit allowable under this subpart for any increase in qualified investment by reason of this paragraph shall be treated as earned during the taxable year of the decrease in the amount of nonqualified nonrecourse financing.

* * * * * * *

(e) LIMITATIONS WITH RESPECT TO CERTAIN PERSONS.—

(1) IN GENERAL.—In the case of—

(A) an organization to which section 593 applies, and

(B) a regulated investment company or a real estate investment trust subject to taxation under subchapter M (sec. 851 and following),

the qualified investment [and the $25,000 amount specified under subparagraphs (A) and (B) of subsection (a)(3)] shall equal such person's ratable share of such [items.] *qualified investment.*

(2) **Ratable share.**—For purposes of paragraph (1), the ratable share of any person for any taxable year of [the items described therein] *qualified investment* shall be—

(A) in the case of an organization referred to in paragraph (1)(A), 50 percent thereof, and

(B) in the case of a regulated investment company or a real estate investment trust, the ratio (i) the numerator of which is its taxable income and (ii) the denominator of which is its taxable income computed without regard to the deduction for dividends paid provided by section 852(b)(2)(D) or 857(b)(2)(B), as the case may be.

For purposes of subparagraph (B) of the preceding sentence, the term "taxable income" means in the case of a regulated investment company its investment company taxable income (within the meaning of section 852(b)(2)), and in the case of a real estate investment trust its real estate investment trust taxable income (within the meaning of section 857(b)(2)) determined without regard to any deduction for capital gains dividends (as defined in section 857(b)(3)(C)) and by excluding any net capital gain.

(3) **Noncorporate lessors.**—A credit shall be allowed by section 38 to a person which is not a corporation with respect to property of which such person is the lessor only if—

(A) the property subject to the lease has been manufactured or produced by the lessor, or

(B) the term of the lease (taking into account options to renew) is less than 50 percent of the useful life of the property, and for the period consisting of the first 12 months after the date on which the property is transferred to the lessee the sum of the deductions with respect to such property which are allowable to the lessor solely by reason of section 162 (other than rents and reimbursed amounts with respect to such property) exceeds 15 percent of the rental income produced by such property.

In the case of property of which a partnership is the lessor, the credit otherwise allowable under section 38 with respect to such property to any partner which is a corporation shall be allowed notwithstanding the first sentence of this paragraph. For purposes of this paragraph, an S corporation shall be treated as a person which is not a corporation. This paragraph shall not apply with respect to any property which is treated as section 38 property by reason of section 48(a)(1)(E). For purposes of subparagraph (B), in the case of any recovery property (within the meaning of section 168), the useful life shall be the present class life for such property (as defined in section 168(g)(2)).

(f) **Limitation in Case of Certain Regulated Companies.**—

(1) **General rule.**—Except as otherwise provided in this subsection, no credit *determined under section 46(a)* shall be allowed by section 38 with respect to any property described in section 50 (as in effect before its repeal by the Revenue Act of 1978) which is public utility property (as defined in paragraph (5)) of the taxpayer—

(A) Cost of service reduction.—If the taxpayer's cost of serivce for ratemaking purposes is reduced by reason of any portion of the credit *determined under section 46(a) and* allowable by section 38 (determined without regard to this subsection); or

(B) Rate base reduction.—If the base to which the taxpayer's rate of return for ratemaking purposes is applied is reduced by reason of any portion of the credit allowable by section 38 (determined without regard to this subsection).

Subparagraph (B) shall not apply if the reduction in the rate base is restored not less rapidly than ratably. If the taxpayer makes an election under this sentence within 90 days after the date of the enactment of this paragraph in the manner prescribed by the Secretary, the immediately preceding sentence shall not apply to property described in paragraph (5)(B) if any agency or instrumentality of the United States having jurisdiction for ratemaking purposes with respect to such taxpayer's trade or business referred to in paragraph (5)(B) determines that the natural domestic supply of the product furnished by the taxpayer in the course of such trade or business is insufficient to meet the present and future requirements of the domestic economy.

(2) Special rule for ratable flow-through.—If the taxpayer makes an election under this paragraph within 90 days after the date of the enactment of this paragraph in the manner prescribed by the Secretary, paragraph (1) shall not apply, but no credit *determined under section 46(a)* shall be allowed by section 38 with respect to any property described in section 50 (as in effect before its repeal by the Revenue Act of 1978) which is public utility property (as defined in paragraph (5)) of the taxpayer—

(A) Cost of service reduction.—If the taxpayer's cost of service for ratemaking purposes or in its regulated books of account is reduced by more than a ratable portion of the credit *determined under section 46(a) and* allowable by section 38 (determined without regard to this subection), or

(B) Rate base reduction.—If the base to which the taxpayer's rate of return for ratemaking purposes is applied is reduced by reason of any portion of the credit allowable by section 38 (determined without regard to this subsection).

(3) Special rule for immediate flow-through in certain cases.—In the case of property to which section 167(1)(2)(C) applies, if the taxpayer makes an election under this paragraph within 90 days after the date of the enactment of this paragraph in the manner prescribed by the Secretary, paragraphs (1) and (2) shall not apply to such property.

(4) Limitation.—

(A) In general.—The requirements of paragraphs (1), (2), and (9) regarding cost of service and rate base adjustments shall not be applied to public utility property of the taxpayer to disallow the credit with respect to such property before the first final determination which is inconsistent with paragraph (1), (2), or (9) (as the case may be) is put into effect with respect to public utility property (to which this subsection applies) of the taxpayer. Thereupon, paragraph (1), (2), or (9) shall apply to disallow the credit with respect to public utility property (to which this subsection applies) place in service by the taxpayer—

(i) before the date that the first final determination, or a subsequent determination, which is inconsistent with paragraph (1), (2) or (9) (as the case may be) is put into effect, and

(ii) on or after the date tha a determination referred to in clause (i) is put into effect and before the date that a subsequent determination thereafter which is consistent with paragraph (1), (2), or (9) (as the case may be) is put into effect.

(B) Determinations.—For purposes of this paragraph, a determination is a determination made with respect to public utility property (to which this subsection applies) by a governmental unit, agency, instrumentality, or commission or similar body described in subsection (c)(3)(B) which determines the effect of the credit *determined under section 46(a) and* allowed by section 38 (determined without regard to this subsection)—

(i) on the taxpayer's cost of service or rate base for ratemaking purposes, or

(ii) in the case of a taxpayer which made an election under paragraph (2) or the election described in paragraph (9), on the taxpayer's cost of service for ratemaking purposes or in its regulated books of account or rate base for ratemaking purposes.

(C) Special rules.—For purposes of this paragraph—

(i) a determination is final if all rights to appeal or to request a review, a rehearing, or a redetermination, have been exhausted or have lapsed,

(ii) the first final determination is the first final determination made after the date of the enactment of this subsection, and

(iii) a subsequent determination is a determination subsequent to a final determination.

(5) Public utility property.—For purposes of this subsection, the term "public utility property" means—

(A) property which is public utility property within the meaning of subsection (c)(3)(B), and

(B) property used predominantly in the trade or business of the furnishing or sale of (i) steam through a local distribution system or (ii) the transportation of gas or steam by pipeline, if the rates for such furnishing or sale are established or approved by a governmental unit, agency, instrumentality, or commission described in subsection (c)(3)(B).

(6) Ratable portion.—For purposes of determining ratable restorations to base under paragraph (1) and for purposes of determining ratable portions under paragraph (2)(A), the period of time used in computing depreciation expense for pur-

poses of reflecting operating results in the taxpayer's regulated books of account shall be used.

(7) REORGANIZATIONS, ASSETS ACQUISITIONS, ETC.—If by reason of a corporate reorganization, by reason of any other acquisition of the assets of one taxpayer by another taxpayer, by reason of the fact that any trade or business of the taxpayer is subject to ratemaking by more than one body, or by reason of other circumstances, the application of any provisions of this subsection to any public utility property does not carry out the purposes of this subsection, the Secretary shall provide by regulations for the application of such provisions in a manner consistent with the purposes of this subsection.

(8) PROHIBITION OF IMMEDIATE FLOWTHROUGH.—An election made under paragraph (3) shall apply only to the amount of the credit allowable under section 38 with respect to public utility property **[**(within the meaning of subsection (a)(7)(C))**]** *(within the meaning of the first sentence of subsection (c)(3)(B))* determined as if the Tax Reduction Act of 1975, the Tax Reform Act of 1976, the Energy Act of 1978, and the Revenue Act of 1978 had not been enacted. Any taxpayer who had timely made an election under paragraph (3) may, at his own option and without regard to any requirement imposed by an agency described in subsection (c)(3)(B), elect within 90 days after the date of the enactment of the Tax Reduction Act of 1975 (in such manner as the Secretary shall prescribe) to have the provisions of paragraph (3) apply with respect to the amount of the credit allowable under section 38 with respect to such property which is in excess of the amount determined under the preceding sentence. If such taxpayer does not make such an election, paragraph (1) or (2) (whichever paragraph is applicable without regard to this paragraph) shall apply to such excess credit, except that if neither paragraph (1) nor (2) is applicable (without regard to this paragraph), paragraph (1) shall apply unless the taxpayer elects (in such manner as the Secretary shall prescribe) within 90 days after the date of the enactment of the Tax Reduction Act of 1975 to have the provisions of paragraph (2) apply. The provisions of this paragraph shall not be applied to disallow such excess credit before the first final determination which is inconsistent with such requirements is made, determined in the same manner as under paragraph (4).

(9) SPECIAL RULE FOR ADDITIONAL CREDIT.—If the taxpayer makes an election under subparagraph (E) of subsection (a)(2), for a taxable year beginning after December 31, 1975, then, notwithstanding the prior paragraphs of this subsection, no credit shall be allowed by section 38 in excess of the amount which would be allowed without regard to the provisions of subparagraph (E) of subsection (a)(2) if—

(A) the taxpayer's cost of service for ratemaking purposes or in its regulated books of account is reduced by reason of any portion of such credit which results from the transfer of employer securities or cash to a tax credit employee stock ownership plan which meets the requirements of section 409A;

(B) the base to which the taxpayer's rate of return for ratemaking purposes is applied is reduced by reason of any portion of such credit which results from a transfer described in subparagraph (A) to such employee stock ownership plan; or

(C) any portion of the amount of such credit which results from a transfer described in subparagraph (A) to such employee stock ownership plan is treated for ratemaking purposes in any way other than as though it had been contributed by the taxpayer's common shareholders.

(10) USE OF INCONSISTENT ESTIMATES AND PROJECTIONS, ETC., FOR PURPOSES OF PARAGRAPHS (1) AND (2).—

(A) IN GENERAL.—One way in which the requirements of paragraph (1) or (2) are not met is if the taxpayer, for ratemaking purposes, uses a procedure or adjustment which is inconsistent with the requirements of paragraph (1) or paragraph (2), as the case may be.

(B) USE OF INCONSISTENT ESTIMATES AND PROJECTIONS.—The procedures and adjustments which are to be treated as inconsistent for purposes of subparagraph (A) shall include any procedure or adjustment for ratemaking purposes which uses an estimate or projection of the taxpayer's qualified investment for purposes of the credit allowable by section 38 unless such estimate or projection is consistent with the estimates and projections of property which are used, for ratemaking purposes, with respect to the taxpayer's depreciation expense and rate base.

(C) REGULATORY AUTHORITY.—The Secretary may by regulations prescribe procedures and adjustments (in addition to those specified in subparagraph (b)) which are to be treated as inconsistent for purposes of subparagraph (A).

(g) 50 PERCENT CREDIT IN THE CASE OF CERTAIN VESSELS—

(1) IN GENERAL.—In the case of a qualified withdrawal out of the untaxed portion of a capital gain account or out of an ordinary income account in a capital construction fund established under section 607 of the Merchant Marine Act, 1936 (46 U.S.C. 1177), for—

(A) the acquisition, construction, or reconstruction of a qualified vessel, or

(B) the acquisition, construction, or reconstruction of barges or containers which are part of the complement of a qualified vessel and to which subsection (f)(1)(B) of such section 607 applies,

for purposes of section 38 there shall be deemed to have been made (at the time of such withdrawal) a qualified investment (within the meaning of subsection (c)) or qualified progress expenditures (within the meaning of subsection (d)), whichever is appropriate, with respect to property which is section 38 property.

(2) AMOUNT OF CREDIT.—For purposes of paragraph (1), the amount of the qualified investment shall be 50 percent of the applicable percentage of the qualified withdrawal referred to in paragraph (1), or the amount of the qualified progress expenditures shall be 50 percent of such withdrawal, as the case

may be. For purposes of determining the amount of the credit allowable by reason of this subsection for any taxable year, the limitation of [subsection (a)(3)] *section 38(c)* shall be determined without regard to subsection (d)(1)(A) of such section 607.

(3) COORDINATION WITH SECTION 38.—The amount of the credit allowable by reason of this subsection with respect to any property shall be the minimum amount allowable under section 38 with respect to such property. If, without regard to this subsection, a greater amount is allowable under section 38 with respect to such property, then such greater amount shall apply and this subsection shall not apply.

(4) COORDINATION WITH SECTION 47.—Section 47 shall be applied—

(A) to any property to which this subsection applies, and

(B) to the payment (out of the untaxed portion of a capital gain account or out of the ordinary income account of a capital construction fund established under section 607 of the Merchant Marine Act, 1936) of the principal of any indebtedness incurred in connection with property with respect to which a credit was allowed under section 38.

For purposes of section 47, any payment described in subparagraph (B) of the preceding sentence shall be treated as a disposition occurring less than 3 years after the property was placed in service; but, in the case of a credit allowable without regard to this subsection, the aggregate amount which may be recaptured by reason of this sentence shall not exceed 50 percent of such credit.

(5) DEFINITIONS.—Any term used in section 607 of the Merchant Marine Act, 1936, shall have the same meaning when used in this subsection.

(6) NO INFERENCE.—Nothing in this subsection shall be construed to infer that any property described in this subsection is or is not section 38 property, and any determination of such issue shall be made as if this subsection had not been enacted.

(h) SPECIAL RULES FOR COOPERATIVES.—In the case of a cooperative organization described in section 1381(a)—

(1) that portion of the credit allowable to the organization under section 38 which the organization cannot use for the taxable year to which the qualified investment is attributable because of the limitation contained in [subsection (a)(3)] *section 38(c)* shall be allocated to the patrons of the organization,

(2) section 47 (relating to certain dispositions, etc., of section 38 property) shall be applied as if any allocated portion of the credit had been retained by the organization, and

(3) the rules necessary to carry out the purposes of this subsection shall be determined under regulations prescribed by the Secretary.

SEC. 47. CERTAIN DISPOSITIONS, ETC., OF SECTION 38 PROPERTY.

(a) GENERAL RULE.—Under regulations prescribed by the Secretary—

(1) EARLY DISPOSITION, ETC.—If during any taxable year any property is disposed of, or otherwise ceases to be section 38

property with respect to the taxpayer, before the close of the useful life which was taken into account in computing the credit under section 38, then the tax under this chapter for such taxable year shall be increased by an amount equal to the aggregate decrease in the credits allowed under section 38 for all prior taxable years which would have resulted solely from substituting, in determining qualified investment, for such useful life the period beginning with the time such property was placed in service by the taxpayer and ending with the time such property ceased to be section 38 property.

(2) PROPERTY BECOMES PUBLIC UTILITY PROPERTY.—If during any taxable year any property taken into account in determining qualified investment becomes public utility property (within the meaning of section 46(c)(3)(B)), then the tax under this chapter for such taxable year shall be increased by an amount equal to the aggregate decrease in the credits allowed under section 38 for all prior taxable years which would have resulted solely from treating the property, for purposes of determining qualified investment, as public utility property (after giving due regard to the period before such change in use). If the application of this paragraph to any property is followed by the application of paragraph (1) to such property, proper adjustment shall be made in applying paragraph (1).

(3) PROPERTY CEASES TO BE PROGRESS EXPENDITURE PROPERTY.—

(A) IN GENERAL.—If during any taxable year any property taken into account in determining qualified investment under section 46(d) ceases (by reason of sale or other disposition, cancellation or abandonment of contract, or otherwise) to be, with respect to the taxpayer, property which, when placed in service, will be new section 38 property, then the tax under this chapter for such taxable year shall be increased by an amount equal to the aggregate decrease in the credits allowed under section 38 for all prior taxable years which would have resulted solely from reducing to zero the qualified investment taken into account with respect to such property.

(B) CERTAIN EXCESS CREDIT RECAPTURED.—Any amount which would have been applied as a reduction of the qualified investment in property by reason of paragraph (4) of section 46(c) but for the fact that a reduction under such paragraph cannot reduce qualified investment below zero shall be treated as an amount required to be recaptured under subparagraph (A) for the taxable year in which the property is placed in service.

(C) CERTAIN SALES AND LEASEBACKS.—Under regulations prescribed by the Secretary, a sale by, and leaseback to, a taxpayer who, when the property is placed in service, will be a lessee to whom section 48(d) applies shall not be treated as a cessation described in subparagraph (A) to the extent that the qualified investment which will be passed through to the lessee under section 48(d) with respect to such property is not less than the qualified progress expenditures properly taken into account by the lessee with respect to such property.

(D) Coordination with paragraphs (1) and (5).—If, after property is placed in service, there is a disposition or other cessation described in paragraph (1), or a disposition, cessation, or change in expected use described in paragraph (5), then paragraph (1) or (5), as the case may be, shall be applied as if any credit, which was allowable by reason of section 46(d) and which has not been required to be recaptured before such disposition, cessation, or change in use were allowable for the taxable year the property was placed in service.

(4) Special rules for commuter highway vehicles.—

(A) Useful life.—For purposes of this subsection, 3 years shall be treated as the useful life which was taken into account in computing the credit under section 38 with respect to any commuter highway vehicle (as defined in section 46(c)(6)(B)).

(B) Change in use.—If less than 80 percent of the mileage use of any commuter highway vehicle by the taxpayer during that portion of any taxable year which is within the first 36 months of the operation of such vehicle by the taxpayer meets the requirements of section 46(c)(6)(B), then the tax under this chapter for such taxable year shall be increased by an amount equal to the aggregate decrease in the credits allowed under section 38 for all prior taxable years which would have resulted solely from treating such vehicle, for purposes of determining qualified investment, as not being a commuter highway vehicle. If the application of this subparagraph to any property is followed by the application of paragraph (1) to such property, proper adjustment shall be made in applying paragraph (1).

(5) Special rules for recovery property.—

(A) General Rule.—If, during any taxable year, section 38 recovery property is disposed of, or otherwise ceases to be section 38 property with respect to the taxpayer before the close of the recapture period, then, except as provided in subparagraph (D), the tax under this chapter for such taxable year shall be increased by the recapture percentage of the aggregate decrease in the credits allowed under section 38 for all prior taxable years which would have resulted solely from reducing to zero the qualified investment taken into account with respect to such property.

(B) Recapture percentage.—For purposes of subparagraph (A), the recapture percentage shall be determined in accordance with the following table:

If the recovery property ceases to be section 38 property within—	The recapture percentage is: For 15-year, 10-year, and 5-year property	For 3-year property
One full year after placed in service	100	100
One full year after the close of the period described in clause (i)	80	66
One full year after the close of the period described in clause (ii)	60	33
One full year after the close of the period described in clause (iii)	40	0
One full year after the close of the period described in clause (iv)	20	0

(C) PROPERTY CEASES TO BE PROGRESS EXPENDITURE PROPERTY.—If, during any taxable year, any recovery property taken into account in determining qualified investment under section 46(d)(1) ceases to be progress expenditure property (as determined under paragraph (3)) or becomes, with respect to the taxpayer, recovery property of a character other than that expected in determining the applicable percentage under section 46(d)(1)(B)(i), then the tax under this chapter for such taxable year shall be adjusted in accordance with regulations prescribed by the Secretary.

(D) LIMITATION.—The tax for the taxable year shall be increased under subparagraph (A) only with respect to the credits allowed under section 38 which were used to reduce tax liability. In the case of credits not so used to reduce tax liability, the carrybacks and carryovers under section [46(b)] *39* shall be appropriately adjusted. If, prior to a disposition to which this subsection applies, any portion of any credit is not allowable with respect to any property by reason of section 168(i)(3), such portion shall be treated (for purposes of this subparagraph) as not having been used to reduce tax liability.

(E) DEFINITIONS AND SPECIAL RULES.—

(i) SECTION 38 RECOVERY PROPERTY.—For purposes of this paragraph, the term "section 38 recovery property" means any section 38 property which is recovery property (within the meaning of section 168).

(ii) RECAPTURE PERIOD.—For purposes of this paragraph, the term "recapture period" means, with respect to any recovery property, the period consisting of the first full year after the property is placed in service and the 4 succeeding full years (the 2 succeeding full years in the case of 3-year property).

(iii) CLASSIFICATION OF PROPERTY.—For purposes of this paragraph, property shall be classified as provided in section 168(c).

(iv) PARAGRAPH (1) NOT TO APPLY.—Paragraph (1) shall not apply with respect to any recovery property.

(6) CARRYBACKS AND CARRYOVERS ADJUSTED.—In the case of any cessation described in paragraph (1), (3), or (5) or any

change in use described in paragraph (2) or (4), the carrybacks and carryovers under section [46(b)] *39* shall be adjusted by reason of such cessation (or change in use).

*   *   *   *   *   *   *

(c) SPECIAL RULE.—Any increase in tax under subsection (a) shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit allowable under subpart [A] *A, B, or D.*

[(d) PROPERTY CEASING TO BE AT RISK.—

[(1) IN GENERAL.—If the taxpayer ceases to any extent to be at risk (within the meaning of section 46(c)(8)(B)) with respect to any amount in connection with section 38 property, then the tax under this chapter for such taxable year shall be increased by an amount equal to the aggregate decrease in credits allowed under section 38 for all prior taxable years which would have resulted from substituting, in determining qualified investment, the amount determined under section 46(c)(8) with respect to such property if, on the date the property was placed in service, the taxpayer had not been at risk with respect to the amount he ceased to be at risk to.

[(2) CERTAIN TRANSFERS NOT TREATED AS CEASING TO BE AT RISK.—If, after the 12-month period after the date on which a taxpayer borrows an amount from a qualified person (within the meaning of section 46(c)(8)(D)) with respect to which such taxpayer is considered at risk under section 46(c)(8)(B), the qualified person transfers or agrees to transfer any evidence of such indebtedness to a person who is not a qualified person, then, for purposes of paragraph (1), the taxpayer shall not be treated as ceasing to be at risk with respect to such amount.]

(d) INCREASES IN NONQUALIFIED NONRECOURSE FINANCING.—

(1) IN GENERAL.—If, as of the close of the taxable year, there is a net increase with respect to the taxpayer in the amount of nonqualified nonrecourse financing (within the meaning of section 46(c)(8)) with respect to any property to which section 46(c)(8) applied, then the tax under this chapter for such taxable year shall be increased by an amount equal to the aggregate decrease in credits allowed under section 38 for all prior taxable years which would have resulted from reducing the qualified investment taken into account with respect to such property by the amount of such net increase.

(2) TRANSFERS OF DEBT MORE THAN 1 YEAR AFTER INITIAL BORROWING NOT TREATED AS INCREASING NONQUALIFIED NONRECOURSE FINANCING.—For purposes of paragraph (1), the amount of nonqualified nonrecourse financing (within the meaning of section 46(c)(8)(D)) with respect to the taxpayer shall not be treated as increased by reason of a transfer of (or agreement to transfer) any evidence of an indebtedness if such transfer occurs (or such agreement is entered into) more than 1 year after the date such indebtedness was incurred.

(3) SPECIAL RULES FOR CERTAIN ENERGY PROPERTY.—

(A) IN GENERAL.—In the case of the second taxable year following the taxable year in which any qualified energy property (within the meaning of section 46(c)(8)(F)) is placed in service by the taxpayer and any succeeding taxable year, the taxpayer, for purposes of paragraph (1), shall be treated as [ceasing to be at risk] *increasing the amount of nonqualified nonrecourse financing (within the meaning of section 46(c)(8))* with respect to such property for such taxable year in an amount equal to the credit recapture amount (if any).

(B) CREDIT RECAPTURE AMOUNT.—For purposes of this paragraph, the term "credit recapture amount" means an amount equal to the excess (if any) of—

(i) the total amount of principal to be paid as of the close of any taxable year under a nonrecourse level payment loan (as defined in section 46(c)(8)(F)(iv) [other than a loan described in section 46(c)(8)(B)(ii)]) with respect to such property, over

(ii) the sum of—

(I) the amount of principal actually paid as of the close of such taxable year, plus

(II) the sum of the credit recapture amounts with respect to such property for all preceding taxable years.

(C) SPECIAL RULES FOR DETERMINING PRINCIPAL TO BE PAID.—For purposes of subparagraph (b)(i), in determining the amount of the principal to be paid under a level payment loan, such determination shall be made as if such loan was to be fully repaid by the end of a period equal to the earlier of—

(i) the present class life (as defined in section 168(g)(2)) of the property or, if the property has no present class life, a similar period determined by the Secretary, or

(ii) the period at the end of which will repayment is to occur under the terms of the loan.

(D) SPECIAL RULE FOR CERTAIN CUMULATIVE DEFICIENCIES.—If the excess of—

(i) the amount of the total scheduled principal payments under a loan described in subparagraph (B)(i) as of the close of the taxable year, over

(ii) the total principal actually paid under such loan as of the close of such taxable year,

is equal to or greater than the amount of such total scheduled payments for the 5-taxable year period ending with such taxable year, then, notwithstanding subparagraph (B), the credit recapture amount for such taxable year shall be equal to the principal remaining to be paid as of the close of such taxable year over the sum of the credit recapture amounts with respect to such property for all preceding taxable years.

(E) SPECIAL RULE FOR CERTAIN DISPOSITIONS.—

(i) IN GENERAL.—If any property which is held by the taxpayer and to which this paragraph applies is disposed of by the taxpayer, then for purposes of paragraph (1) and notwithstanding subparagraph (B), the credit recapture amount for the taxpayer shall be an amount equal to the unpaid principal on the loan described in subparagraph (B)(i) as of the date of disposition;

(ii) ASSUMPTIONS, ETC.—Any amount of the loan described in subparagraph (B)(i) which is assumed or taken subject to by any person shall be treated for purposes of clause (i) as not reducing unpaid principal with respect to such loan.

(F) APPLICATION WITH SUBSECTION (a).—The amount of any increase in tax under subsection (a) with respect to any property to which this paragraph applies shall be determined by reducing the qualified investment with respect to such property by the aggregate credit recapture amounts for all taxable years under this paragraph.

(G) ADDITIONAL INTEREST.—In the case of any increase in tax under paragraph (1) by reason of the application of this paragraph, there shall be added to such tax interest on such tax (determined under section 6621) as if the increase in tax under paragraph (1) was for the taxable year in which the property was placed in service.

SEC. 48. DEFINITIONS; SPECIAL RULES.

(a) SECTION 38 PROPERTY.—

(1) IN GENERAL.— * * *

* * * * * * *

(4) PROPERTY USED BY CERTAIN TAX-EXEMPT ORGANIZATIONS.—Property used by an organization (other than a cooperative described in section 521) which is exempt from the tax imposed by this chapter shall be treated as section 38 property only if such property is used predominantly in an unrelated trade or business the income of which is subject to tax under section 511. If the property is debt-financed property (as defined in section 514(c)), the basis or cost of such property for purposes of computing qualified investment under section 46(c) shall include only that percentage of the basis or cost which is the same percentage as is used under section 514(b), for the year the property is placed in service, in computing the amount of gross income to be taken into account during such taxable year with respect to such property. If any qualified rehabilitated building is used by the tax-exempt organization pursuant to a lease, this paragraph shall not apply to that portion of the basis of such building which is attributable to qualified rehabilitation expenditures. *Rules similar to the rules of section 168(j)(3)(C) (relating to short-term leases) shall apply for purposes of this paragraph.*

(5) PROPERTY USED BY [GOVERNMENTAL UNITS] *GOVERNMENTAL UNITS AND CERTAIN FOREIGN PERSONS.*—[Property used by the United States, any State or political subdivision thereof, any international organization, or any agency or instrumentality of any of the foregoing shall not be treated as section 38 property.] Property used—

(A) by the United States, any State or political subdivision thereof, any possession of the United States, or any agency or instrumentality of any of the foregoing, or

(B) by any foreign person or entity (as defined in section 168(j)(4)(C)), but only with respect to property to which section 168(j)(4)(A)(iii) applies (determined after the application of section 168(j)(4)(B)),

shall not be treated as section 38 property.

* * * * * * *

For purposes of the preceding sentence, the International Telecommunications Satellite Consortium, the International Maritime Satellite Organization, and any successor organization of such Consortium or Organization shall not be treated as an international organization. If any qualified rehabilitated building is used by the governmental unit pursuant to a lease, this paragraph shall not apply to that portion of the basis of such building which is attributable to qualified rehabilitation expenditures. *Rules similar to the rules of section 168(j)(3)(C) (relating to short-term leases) shall apply for purposes of this paragraph. This paragraph shall not apply to any qualified solid waste disposal facility (within the meaning of section 168(j)(6)(C)). For provisions providing special rules for application of this paragraph and paragraph (4), see section 168(j).*

(c) USED SECTION 38 PROPERTY.—

(1) IN GENERAL.—For purposes of this subpart, the term "used section 38 property" means section 38 property acquired by purchase after December 31, 1961, which is not new section 38 property. Property shall not be treated as "used section 38 property" if, after its acquisition by the taxpayer. it is used by a person who used such property before such acquisition (or by a person who bears a relationship described in section 179(d)(2)(A) or (B) to a person who used such property before such acquisition).

(2) DOLLAR LIMITATION.—

(A) IN GENERAL.—The cost of used section 38 property taken into account under section 46(c)(1)(B) for any taxable year shall not exceed $150,000 ($125,000 for taxable years beginning in 1981, 1982, 1983, or 1984). If such cost exceeds $150,000 (or $125,000 as the case may be), the taxpayers shall select (at such time and in such manner as the Secretary shall by regulations prescribe) the items to be taken into account, but only to the extent of an aggregate cost of $150,000 (or $125,000). Such a selection, once made, may be changed only in the manner, and to the extent, provided by such regulations.

(B) MARRIED INDIVIDUALS.—In the case of a husband or wife who files a separate return, the limitation under subparagraph (A) shall be $75,000 ($62,500 for taxable years beginning in 1981, 1982, 1983, or 1984). This subparagraph shall not apply if the spouse of the taxpayer has not used section 38 property which may be taken into account as qualified investment for the taxable year of such spouse which ends within or with the taxpayer's taxable year.

(C) CONTROLLED GROUPS.—In the case of a controlled group, the amount specified under subparagraph (A) shall be reduced for each component member of the group by apportioning such amount among the component members of such group in accordance with their respective amounts of used section 38 property which may be taken into account.

(D) Partnerships and s corporations.—In the case of a partnership, the limitation contained in subparagraph (A) shall apply with respect to the partnership and with respect to each partner. A similar rule shall apply in the case of an S corporation and its shareholders.

(3) Definitions.—For purposes of this subsection—

(A) Purchase.—The term "purchase" has the meaning assigned to such term by section 179(d)(2).

(B) Cost.—The cost of used section 38 property does not include so much of the basis of such property as is determined by reference to the adjusted basis of other property held at any time by the person acquiring such property. If property is disposed of (other than by reason of its destruction or damage by fire, storm, shipwreck, or other casualty, or its theft) and used section 38 property similar or related in service or use is acquired as a replacement therefor in a transaction to which the preceding sentence does not apply, the cost of the used section 38 property acquired shall be its basis reduced by the adjusted basis of the property replaced. The cost of used section 38 property shall not be reduced with respect to the adjusted basis of any property disposed of if, by reason of section 47, such disposition involved an increase of tax or a reduction of the unused credit carrybacks or carryovers described in section **[**46(b)**]** *39*.

(C) Controlled group.—The term "controlled group" has the meaning assigned to such term by section 1563(a), except that the phrase "more that 50 percent" shall be substituted for the phrase "at least 80 percent" each place it appears in section 1563(a)(1).

(d) Certain Leased Property.—

(1) General rule.—A person (other than a person referred to in section 46(e)(1)) who is a lessor of property may (at such time, in such manner, and subject to such conditions as are provided by regulations prescribed by the Secretary) elect with respect to any new section 38 property (other than property described in paragraph (4)) to treat the lessee as having acquired such property for an amount equal to—

(A) except as provided in subparagraph (B), the fair market value of such property, or

(B) if the property is leased by a corporation which is a component member of a controlled group (within the meaning of section **[**46(a)(6)**]** *38(c)(3)(B)*) to another corporation which is a component member of the same controlled group, the basis of such property to the lessor.

(2) Special rule for certain short term leases.—

(A) In general.—A person (other than a person referred to in section 46(e)(1)) who is a lessor of property described in paragraph (4) may (at such time, in such manner, and subject to such conditions as are provided by regulations prescribed by the Secretary) elect with respect to such property to treat the lessee as having acquired a portion of such property for the amount determined under subparagraph (B).

(B) DETERMINATION OF LESSEE'S INVESTMENT.—The amount for which a lessee of property described in paragraph (4) shall be treated as having acquired a portion of such property is an amount equal to a fraction, the numerator of which is the term of the lease and the denominator of which is the class life of the property leased (determined under section 167(m)), of the amount for which the lessee would be treated as having acquired the property under paragraph (1).

(C) DETERMINATION OF LESSOR'S QUALIFIED INVESTMENT.—The qualified investment of a lessor of property described in paragraph (4) in any such property with respect to which he has made an election under this paragraph is an amount equal to his qualified investment in such property (as determined under section 46(c)) multiplied by a fraction equal to the excess of one over the fraction used under subparagraph (B) to determine the lessee's investment in such property.

(3) LIMITATIONS.—The elections provided by paragraphs (1) and (2) may be made with respect to property which would be new section 38 property if acquired by the lessee. For purposes of the preceding sentence and section 46(c), the useful life of property in the hands of the lessee is the useful life of such property in the hands of the lessor. If a lessor makes the election provided by paragraph (1) with respect to any property, the lessee shall be treated for all purposes of this subpart as having acquired such property. If a lessor makes the election provided by paragraph (2) with respect to any property, the lesseee shall be treated for all purposes of this subpart as having acquired a fractional portion of such property equal to the fraction determined under paragraph (2)(B) with respect to such property.

(4) PROPERTY TO WHICH PARAGRAPH (2) APPLIES.—Paragraph (2) shall apply only to property which—

(A) is new section 38 property,

(B) has a class life (determined under section 167(m)) in excess of 14 years,

(C) is leased for a period which is less than 80 percent of its class life, and

(D) is not leased subject to a net lease (within the meaning of section 57(c)(1)(B)).

(5) COORDINATION WITH BASIS ADJUSTMENT.—In the case of any property with respect to which an election is made under this subsection—

(A) subsection (q) (other than paragraph (4)) shall not apply with respect to such property,

(B) the lessee of such property shall include ratably in gross income over the shortest recovery period which could be applicable under section 168 with respect to such property an amount equal to 50 percent of the amount of the credit allowable under section 38 to the lessee with respect to such property, and

(C) in the case of a disposition of such property to which section 47 applies, this paragraph shall be applied in accordance with regulations prescribed by the Secretary.

(6) COORDINATION WITH AT-RISK RULES.—

(A) REQUIREMENT THAT LESSOR BE AT RISK.—In the case of any property which, in the hands of the lessor, is property to which section 46(c)(8) applies, the amount of the credit allowable to the lessee under section 38 with respect to such property by reason of an election under this subsection shall at no time exceed the credit which would have been allowable to the lessor with respect to such property if—

(i) the lessor's basis in such property were equal to the lessee acquisition amount, and

(ii) no election had been made under this subsection.

(B) LESSEE SUBJECT TO AT-RISK LIMITATIONS.—

(i) In general.—In the case of any lease where—

(I) the lessee is a taxpayer described in section 465(a)(1),

(II) the property is used by the lessee in connection with an activity with respect to which any loss is subject to limitation under section 465, and

(III) the at-risk percentage is less than 30 percent (18 percent in the case of 3-year property),

any credit allowable under section 38 to the lessee by reason of an election under this subsection (hereinafter in this paragraph referred to as the "total credit") shall be allowable only as provided in subparagraph (C).

(ii) AT-RISK PERCENTAGE.—For purposes of this paragraph, the term "at-risk percentage" means the percentage obtained by dividing—

(I) the present value (as of the time the lease is entered into) of the aggregate lease at-risk payments, by

(II) the lessee acquisition amount.

For purposes of subclause (I), the present value shall be determined by using a discount rate equal to the rate in effect under section 6621 as of the time the lease is entered into.

(iii) LESSEE ACQUISITION AMOUNT.—For purposes of this paragraph, the term "lessee acquisition amount" means the amount for which the lessee is treated as having acquired the property by reason of an election under this subsection.

(iv) LEASE AT-RISK PAYMENT.—For purposes of this paragraph, the term "lease at-risk payment" means any rental payment—

(I) which the lessee is required to make under the lease in all events, and

(II) with respect to which the lessee is not protected against loss through nonrecourse financing,

guarantees, stop-loss agreements, or other similar arrangements.

(C) YEAR FOR WHICH CREDIT ALLOWABLE.—

(i) IN GENERAL.—Except as provided in clause (ii), in any case to which subparagraph (B)(i) applies, the portion of the total credit allowable for any taxable year shall be an amount which bears the same ratio to such total credit as—

(I) the aggregate rental payments made by the lessee under the lease during such taxable year, bears to

(II) the lessee acquisition amount.

(ii) REMAINING AMOUNT ALLOWABLE FOR YEAR IN WHICH AGGREGATE RENTAL PAYMENTS EXCEED 30 PERCENT OF ACQUISITION AMOUNT.—The total credit (to the extent not allowable for a preceding taxable year) shall be allowable for the first taxable year as of the close of which the aggregate rental payments made by the lessee under the lease equal or exceed 30 percent (18 percent in the case of 3-year property) of the lessee acquisition amount.

(D) SPECIAL RULES FOR SUBPARAGRAPHS (B) AND (C).—

(i) SUBPARAGRAPHS (B) AND (C) APPLY IN LIEU OF OTHER AT-RISK RULES.—In the case of any election under this subsection, paragraphs (8) and (9) of section 46(c) and subsection (d) of section 47 shall only apply with respect to the lessor.

(ii) APPLICATION TO PARTNERSHIPS AND S CORPORATIONS.—For purposes of subparagraphs (B) and (C), rules similar to the rules of subparagraph (E) (other than clause (ii) thereof) of section 46(c)(8) shall apply.

(iii) SUBSEQUENT REDUCTIONS IN AT-RISK AMOUNT.—Under regulations prescribed by the Secretary, the principles of subsection (d) of section 47 shall apply for purposes of subparagraphs (B) and (C).

(E) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this paragraph, including regulations—

(i) providing for such adjustments as may be appropriate where expenses connected with the lease are borne by the lessor, and

(ii) providing the extent to which contingencies in the lease will be disregarded.

* * * * * * *

(f) ESTATES AND TRUSTS.—In the case of an estate or trust—

(1) the qualified investment for any taxable year shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each, *and*

(2) any beneficary to whom any investment has been apportioned under paragraph (1) shall be treated (for purposes of this subpart) as the taxpayer with respect to such investment, and such investment shall not (by reason of such apportion-

ment) lose its character as an investment in new section 38 property or used section 38 property, as the case may be, [and].

[(3) the $25,000 amount specified under subparagraphs (A) and (B) of section 46(a)(3) applicable to such estate or trust shall be reduced to an amount which bears the same ratio to $25,000 as the amount of the qualified investment allocated to the estate or trust under paragraph (1) bears to the entire amount of the qualified investment.]

(g) **Special Rules for Qualified Rehabilitated Buildings.**—For purposes of this subpart—

(1) **Qualified rehabilitation building defined.**—* * *

(2) **Qualified rehabilitation expenditure defined.**—

(A) **In general.**—The term "qualified rehabilitation expenditure" means any amount properly chargeable to capital account which is incurred after December 31, 1981.—

(i) for property (or additions or improvements to property) which have a recovery period (within the meaning of section 168) of 15 years, and

(ii) in connection with the rehabilitation of a qualified rehabilitated building.

(B) **Certain expenditures not included.**—The term "qualified rehabilitation expenditure" does not include—

(i) **Accelerated methods of depreciation may not be used.**—Any expenditures with respect to which an election has not been made under section 168(b)(3) (to use the straight-line method of depreciation). *The preceding sentence shall not apply to any expendure to the extent subsection (f)(12) or (j) of section 168 applies to such expenditure.*

* * * * * * *

*(VI) **Tax-exempt financing of property used by tax-exempt entities.**—Any expenditure in connection with the rehabilitaiton of the portion of a building which is tax-exempt use property if any portion of—*

(I) the cost of acquiring such building or any interest therein, or

(II) the expenditures in connection with such rehabilitation,

is financed (directly or indirectly) by an obligation the interest on which is exempt from taxation under section 103. For purposes of the preceding sentence, the term "tax-exempt use property" has the meaning given to such term by section 168(j)(3), except that "1 year" shall be substituted for "3 years" in section 168(j)(3)(C)(iii). This clause shall not apply for purposes of determining under paragraph (1)(C) whether a building has been substantially rehabilitated.

* * * * * * *

(1) **Energy Property.**—For purposes of this subpart—

(1) **Treatment as section 38 property.**—For any period for which the energy percentage determined under section

[46(a)(2)(C)] *46(b)(2)* for any energy property is greater than zero—

(A) such energy property shall be treated as meeting the requirements of paragraph (1) of subsection (a), and

(B) paragraph (3) of subsection (a) shall not apply to such property.

* * * * * * *

(16) Qualified intercity buses.—

(A) In general.—Paragraph (2)(A)(ix) shall apply only with respect to the qualified investment in qualified intercity buses of a taxpayer—

(i) which is a common carrier regulated by the Interstate Commerce Commission or an appropriate State agency (as determined by the Secretary), and

(ii) which is engaged in the trade or business of furnishing intercity passenger transportation or intercity charter service by bus.

(B) Qualified intercity bus.—The term "qualified intercity bus" means an automobile bus—

[(i) the chassis and body of which is exempt under section 4063(a)(6) from the tax imposed by section 4061(a),]

(i) the chassis of which is an automobile bus chassis and the body of which is an automobile bus body,

* * * * * * *

(m) Application of Certain Transitional Rules.—Where the application of any provision of subsection (l) of this section or subsection [(a)(2)]*(b)* or (c)(3) of section 46 is expressed in terms of a period, such provision shall apply only to—

(1) property to which section 46(d) does not apply, the construction, reconstruction, or erection of which is completed by the taxpayer on or aftrer the first day of such period, but only to the extent of the basis thereof attributable to the construction, reconstruction, or erection during such period.

(2) property to which section 46(d) does not apply, acquired by the taxpayer during such period and placed in service by the taxpayer during such period, and

(3) property to which section 46(d) applies, but only to the extent of the qualified investment (as determined under subsections (c) and (d) of section 46) with respect to qualified progress expenditures made during such period.

[(n) Requirements for Allowance of Employee Plan Percentage.—

[(1) In general.—

[(A) Basic employee plan percentage.—The basic employee plan percentage shall not apply to any taxpayer for any taxable year unless the taxpayer on his return for such taxable year agrees, as a condition for the allowance of such percentage—

[(i) to make transfers of employer securities to a tax credit employee stock ownership plan maintained by the taxpayer having an aggregate value which does not exceed 1 percent of the amount of the qualified investment (as determined under subsections (c) and (d) of section 46) for the taxable year, and

[(ii) to make such transfers at the times prescribed in subparagraph (C).

[(B) MATCHING EMPLOYEE PLAN PERCENTAGE.—The matching employee plan percentage shall not apply to any taxpayer for any taxable year unless the basic employee plan percentage applies to such taxpayer for such taxable year, and the taxpayer on his return for such taxable year agrees, as a condition for the allowance of the matching employee plan percentage—

[(i) to make transfers of employer securities to a tax credit employee stock ownership plan maintained by the employer having an aggregate value equal to the lesser of—

[(I) the sum of the qualified matching employee contributions made to such plan for the taxable year, or

[(II) one-half of 1 percent of the amount of the qualified investment (as determined under subsections (c) and (d) of section 46) for the taxable year, and

[(ii) to make such transfers at the times prescribed in subparagraph (C).

[(C) TIMES FOR MAKING TRANSFERS.—The aggregate of the transfers required under subparagraphs (A) and (B) shall be made—

[(i) to the extent allocable to that portion of the employee plan credit allowed for the taxable year or allowed as a carryback to a preceding taxable year, not later than 30 days after the due date (including extensions) for filing the return for the taxable year, or

[(ii) to the extent allocable to that portion of the employee plan credit which is allowed as a carryover in a succeeding taxable year, not later than 30 days after the due date (including extensions) for filing the return for such succeeding taxable year.

The Secretary may by regulations provide that transfers may be made later than the times prescribed in the preceding sentence where the amount of any credit or carryover or carryback for any taxable year exceeds the amount shown on the return for the taxable year including where such excess is attributable to qualified matching employee contributions made after the close of the taxable year.

[(D) ORDERING RULES.—For purposes of subparagraph (C), the portion of the employee plan credit allowed for the current year or as a carryover or carryback shall be determined—

[(i) first by treating the credit or carryover or carryback as attributable to the regular percentage,

[(ii) second by treating the portion (not allocated under clause (i)) of such credit or carryover or carryback as attributable to the basic employee plan percentage, and

[(iii) finally by treating the portion (not allocated under clause (i) or (ii)) as attributable to the matching employee plan percentage.

[(2) QUALIFIED MATCHING EMPLOYEE CONTRIBUTION DEFINED.—

[(A) IN GENERAL.—For purposes of this subsection, the term "qualified matching employee contribution" means, with respect to any taxable year, any contribution made by an employee to an a tax credit employee stock ownership plan maintained by the taxpayer if—

[(i) each employee who is entitled to an allocation of employer securities transferred to the tax credit employee stock ownership plan under paragraph (1)(A) is entitled to make such a contribution,

[(ii) the contribution is designated by the employee as a contribution intended to be taken into account under this subparagraph for the taxable year,

[(iii) the contribution is paid in cash to the employer or plan administrator not later than 24 months after the close of the taxable year, and is invested forthwith in employer securities, and

[(iv) the tax credit employee stock ownership plan meets the requirements of subparagraph (B).

[(B) PLAN REQUIREMENTS.—For purposes of subparagraph (A), a tax credit employee stock ownership plan meets the requirements of this subparagraph if—

[(i) participation in the tax credit employee stock ownership plan is not required as a condition of employment and the tax credit employee stock ownership plan does not require matching employee contributions as a condition of participation in the tax credit employee stock ownership plan, and

[(ii) the tax credit employee stock ownership plan provides for allocation of all employer securities transferred to it or purchased by it (because of the requirements of paragraph (1)(B)) to the account of each participant in an amount equal to such participant's matching employee contributions for the year.

[(3) CERTAIN CONTRIBUTIONS OF CASH TREATED AS CONTRIBUTIONS OF EMPLOYER SECURITIES.—For purposes of this subsection, a transfer of cash shall be treated as a transfer of employer securities if the cash is, under the tax credit employee stock ownership plan, used within 30 days to purchase employer securities.

[(4) ADJUSTMENTS IF EMPLOYEE PLAN CREDIT RECAPTURED.—If any portion of the employee plan credit is recaptured under section 47 or the employee plan credit is reduced by a final determination—

[(A) the employer may reduce the amount required to be transferred to the tax credit employee stock ownership plan under paragraph (1) for the current taxable year or any succeeding taxable year by an amount equal to such portion (or reduction), or

[(B) notwithstanding the provisions of paragraph (5) and to the extent not taken into account under subparagraph (A), the employer may deduct an amount equal to such portion (or reduction), subject to the limitations of section 404.

[(5) DISALLOWANCE OF DEDUCTION.—No deduction shall be allowed under section 162, 212, or 404 for amounts required to be transferred to a tax credit employee stock ownership plan under this subsection.

[(6) DEFINITIONS.—For purposes of this subsection—

[(A) EMPLOYER SECURITIES.—The term "employer securities" has the meaning given to such term by section 409A(1).

(B) VALUE.—The term "value" means—

[(i) in the case of securities listed on a national exchange, the average of closing prices of such securities for the 20 consecutive trading days immediately preceding the date on which the securities are contributed to the plan, or

[(ii) in the case of securities not listed on a national exchange, the fair market value as determined in good faith and in accordance with regulations prescribed by the Secretary.]

(o) CERTAIN CREDITS DEFINED.—For purposes of this title—

(1) REGULAR INVESTMENT CREDIT.—The term "regular investment credit" means that portion of the credit allowable by section 38 which is attributable to the regular percentage.

(2) ENERGY INVESTMENT CREDIT.—The term "energy investment credit" means that portion of the credit allowable by section 38 which is attributable to the regular percentage.

[(3) EMPLOYEE PLAN CREDIT.—The term "employee plan credit" means the sum of—

[(A) the basic employee plan credit, and

[(B) the matching employee plan credit.

[(4) BASIC EMPLOYEE PLAN CREDIT.—The term "basic employee plan credit" means that portion of the credit allowable by section 38 which is attributable to the basic employee plan percentage.

[(5) MATCHING EMPLOYEE PLAN CREDIT.—The term "matching employee plan credit" means that portion of the credit allowable by section 38 which is attributable to the matching employee plan percentage.

[(6) BASIC EMPLOYEE PLAN PERCENTAGE.—The term "basic employee plan percentage" means the 1-percent employee plan percentage set forth in section 46(a)(2)(E)(i).

[(7) MATCHING EMPLOYEE PLAN PERCENTAGE.—The term "matching employee plan percentage" means the additional employee plan percentage (not to exceed ½ of 1 percent) set forth in section 46(a)(2)(E)(ii)]

[(8)] *(3)* REHABILITATION INVESTMENT CREDIT.—The term "rehabilitation investment credit" means that portion of the credit allowable by section 38 which is attributable to the rehabilitation percentage.

* * * * * * *

(q) BASIS ADJUSTMENT TO SECTION 38 PROPERTY.—

(1) IN GENERAL.—For purposes of this subtitle, if a credit is determined under section 46(a)[(2)] with respect to section 38 property, the basis of such property shall be reduced by 50 percent of the amount of the credit so determined.

(2) CERTAIN DISPOSITIONS.—If during any taxable year there is a recapture amount determined with respect to any section 38 property the basis of which was reduced under paragraph (1), the basis of such property (immediately before the event resulting in such recapture) shall be increased by an amount equal to 50 percent of such recapture amount. For purposes of the preceding sentence, the term "recapture amount" means any increase in tax (or adjustment in carrybacks or carryovers) determined under section 47.

(3) SPECIAL RULE FOR QUALIFIED REHABILITATED BUILDINGS.—In the case of any credit determined under section 46(a)[(2)] for any qualified rehabilitation expenditure in connection with a qualified rehabilitated building other than a certified historic structure, paragraphs (1) and (2) of this subsection and paragraph (5) of subsection (d) shall be applied without regard to the phrase "50 percent of".

(4) ELECTION OF REDUCED CREDIT IN LIEU OF BASIS ADJUSTMENT FOR REGULAR PERCENTAGE.—

(A) IN GENERAL.—If the taxpayer elects to have this paragraph apply with respect to any recovery property—

(i) paragraphs (1) and (2) shall not apply to so much of the credit determined under section 46(a)[(2)] with respect to such property as is attributable to the regular percentage set forth in section 46[(a)(2)(B)]*(b)(1);* and

(ii) the amount of the credit allowable under section 38 with respect to such property shall be determined under subparagraph (B).

(B) REDUCTION IN CREDIT.—In the case of any recovery property to which an election under subparagraph (A) applies—

(i) solely for the purposes of applying the regular percentage, the applicable percentage under subsection (c) or (d) of section 46 shall be deemed to be 100 percent, and

(ii) nothwithstanding section 46[(a)(2)(B)]*(b)(1),* the regular percentage shall be—

(I) 8 percent in the case of recovery property other than 3-year property, or

(II) 4 percent in the case of recovery property which is 3-year property.

For purposes of the preceding sentence, RRB replacement property (within the meaning of section 168(f)(3)(B)) shall be treated as property which is not 3-year property.

(C) TIME AND MANNER OF MAKING ELECTION.—

(i) IN GENERAL.—An election under this subsection with respect to any property shall be made on the taxpayer's return of the tax imposed by this chapter for the taxpayer's taxable year in which such property is placed in service (or in the case of property to which an election under section 46(d) applies, for the first taxable year for which qualified progress expenditures were taken into account with respect to such property).

(ii) REVOCABLE ONLY WITH CONSENT.—An election under this subsection with respect to any property, once made, may be revoked only with the consent of the Secretary.

(5) RECAPTURE OF REDUCTIONS.—

(A) IN GENERAL.—For purposes of sections 1245 and 1250, any reduction under this subsection shall be treated as a deduction allowed for depreciation.

(B) SPECIAL RULE FOR SECTION 1250.—For purposes of section 1250(b), the determination of what would have been the depreciation adjustments under the straight line method shall be made as if there has been no reduction under this section.

(6) ADJUSTMENT IN BASIS OF INTEREST IN PARTNERSHIP OR S CORPORATION.—The adjusted basis of—

(A) a partner's interest in a partnership, and

(B) stock in an S corporation,

shall be appropriately adjusted to take into account adjustments made under this subsection in the basis of property held by the partnership or S corporation (as the case may be).

(r) CROSS REFERENCE.—

For application of this subpart to certain acquiring corporations, see section 381(c)[(23)]*(25)*.

[Subpart C—Rules for Computing Credit for Expenses of Work Incentive Programs

[Sec. 50A. Amount of credit.
[Sec. 50B. Definitions; special rules.

[SEC. 50A. AMOUNT OF CREDIT.

[(a) DETERMINATION OF AMOUNT.—

[(1) GENERAL RULE.—The amount of the credit allowed by section 40 for the taxable year shall be equal to the sum of—

[(A) 50 percent of the first-year work incentive program expenses, and

[(B) 25 percent of the second-year work incentive program expenses.

[(2) LIMITATION BASED ON AMOUNT OF TAX.—Notwithstanding paragraph (1), the amount of the credit allowed by section 40 for the taxable year shall not exceed the liability for tax for the taxable year.

[(3) Liability for tax.—For purposes of paragraph (2), the liability for tax for the taxable year shall be the tax imposed by this chapter for such year, reduced by the sum of the credits allowable under—

[(A) section 33 (relating to foreign tax credit),

[(B) section 37 (relating to credit for the elderly),

[(C) section 38 (relating to investment in certain depreciable property), and

[(D) section 41 (relating to contributions to candidates for public office).

For purposes of this paragraph, any tax imposed for the taxable year by section 56 (relating to minimum tax for tax preferences), section 72(m)(5)(B) (relating to 10 percent tax on premature distributions to owner-employees), section 72(q)(1) (relating to 5-percent tax on premature distributions under annuity contracts), section 402(e) (relating to tax on lump sum distributions), section 408(f) (relating to additional tax on income from certain retirement accounts), section 531 (relating to accumulated earnings tax), section 541 (relating to personal holding company tax), or section 1374 (relating to tax on certain capital gains of S corporations), and any additional tax imposed for the taxable year by section 1351(d)(1) (relating to recoveries of foreign expropriation losses), shall not be considered tax imposed by this chapter for such year.

[(4) LIMITATION WITH RESPECT TO NONBUSINESS ELIGIBLE EMPLOYEES.—

[(A) In general.—*In the case of any work incentive program expenses paid or incurred by the taxpayer during the taxable year to eligible employees whose services are not performed in connection with a trade or business of the taxpayer—*

[(i) paragraph (1)(A) shall be applied by substituting "35 percent" for "50 percent",

[(ii) subparagraph (B) of paragraph (1) shall not apply, and

[(iii) the aggregate amount of such work incentive program expenses which may be taken into account under paragraph (1) for such taxable year may not exceed $12,000.

[(B) Dependent care credit may not be claimed.—*No credit shall be allowed under section 44A with respect to any amounts paid or incurred by the taxpayer with respect to which the taxpayer is allowed a credit under section 40.*

[(C) Married individuals.—*In the case of a husband or wife who files a separate return, subparagraph (A) shall be applied by substituting "$6,000" for "$12,000". The preceding sentence shall not apply if the spouse of the taxpayer has no work incentive program expenses described in such subparagraph for the taxable year.*

[(b) Carryback and Carryover of Unused Credit.—

[(1) Allowance of credit.—If the amount of the credit determined under subsection (a)(1) for any taxable year exceeds the limitation provided by subsection (a)(2) for such taxable year (hereinafter in this subsection referred to as "unused credit year"), such excess shall be—

[(A) a work incentive program credit carryback to each of the 3 taxable years preceding the unused credit year, and

[(B) a work incentive program credit carryover to each of the 7 taxable years following the unused credit year,

and shall be added to the amount allowable as a credit by section 40 for such years, except that such excess may be a carryback only to a taxable year beginning after December 31, 1971. The entire amount of the unused credit for an unused credit year shall be carried to the earliest of the 10 taxable years to which (by reason of subparagraphs (A) and (B)) such credit may be carried, and then to each of the other 9 taxable years to the extent that, because of the limitation contained in paragraph (2), such unused credit may not be added for a prior taxable year to which such unused credit may be carried. In the case of an unused credit for an unused credit year ending after December 31, 1973, this paragraph shall be applied by substituting "15" for "7" in subparagraph (B), and by substituting "18" for "10", and "17" for "9" in the second sentence.

[(2) Limitation.—The amount of the unused credit which may be added under paragraph (1) for any preceding or succeeding taxable year shall not exceed the amount by which the limitation provided by subsection (a)(2) for such taxable year exceeds the sum of—

[(A) the credit allowable under subsection (a)(1) for such taxable year, and

[(B) the amounts which, by reason of this subsection, are added to the amount allowable for such taxable year and attributable to taxable years preceding the unused credit year.

[SEC. 50B. DEFINITIONS; SPECIAL RULES.

[(a) Work Incentive Program Expenses.—For purposes of this subpart—

[(1) In general.—The term "work incentive program expenses" means the amount of wages paid or incurred by the taxpayer for services rendered by eligible employees.

[(2) First-year work incentive program expenses.—The term "first-year work incentive program expenses" means, with respect to any eligible employee, work incentive program expenses attributable to service rendered during the one-year period which begins on the day the eligible employee begins work for the taxpayer.

[(3) Second-year work incentive program expenses.—The term "second-year work incentive program expenses" means, with respect to any eligible employee, work incentive program expenses attributable to service rendered during the one-year period which begins on the day after the last day of the one-year period described in paragraph (2).

[(4) Limitation on amount of work incentive program expenses.—The amount of the work incentive program expenses taken into account with respect to any eligible employee for any one-year period described in paragraph (2) or (3) (as the case may be) shall not exceed $6,000.

[(5) TERMINATION.—The term "work incentive program expenses" shall not include any amount paid or incurred in any taxable year beginning after December 31, 1981.

[(b) WAGES.—For purposes of subsection (a), the term "wages" means only cash remuneration (including amounts deducted and withheld).

[(c) LIMITATIONS.—

[(1) REIMBURSED EXPENSES.—No item shall be taken into account under subsection (a) to the extent that the taxpayer is reimbursed for such item.

[(2) GEOGRAPHICAL LIMITATION.—No item shall be taken into account under subsection (a) with respect to any expense paid or incurred by the taxpayer with respect to employment outside the United States.

[(3) INELIGIBLE INDIVIDUALS.—No item shall be taken into account under subsection (a) with respect to an individual who—

[(A) bears any of the relationships described in paragraphs (1) through (8) of section 152(a) to the taxpayer, or, if the taxpayer is a corporation, to an individual who owns, directly or indirectly, more than 50 percent in value of the outstanding stock of the corporation (determined with the application of section 267(c)),

[(B) if the taxpayer is an estate or trust, is a grantor, beneficiary, or fiduciary of the estate or trust, or is an individual who bears any of the relationships described in paragraphs (1) through (8) of section 152(a) to a grantor, beneficiary, or fiduciary of the estate or trust, or

[(C) is a dependent (described in section 152(a)(9)) of the taxpayer, or, if the taxpayer is a corporation, of an individual described in subparagraph (A), or, if the taxpayer is an estate or trust, of a grantor, beneficiary, or fiduciary of the estate or trust.

[(d) SUBCHAPTER S CORPORATIONS.—In case of an electing small business corporation (as defined in section 1371)—

[(1) the work incentive program expenses for each taxable year shall be apportioned pro rata among the persons who are shareholders of such corporation on the last day of such taxable year, and

[(2) any person to whom any expenses have been apportioned under paragraph (1) shall be treated (for purposes of this subpart) as the taxpayer with respect to such expenses.

[(e) ESTATES AND TRUSTS.—In the case of an estate or trust—

[(1) the work incentive program expenses for any taxable year shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each, and

[(2) any beneficiary to whom any expenses have been apportioned under paragraph (1) shall be treated (for purposes of this subpart) as the taxpayer with respect to such expenses.

[(f) Limitations With Respect to Certain Persons.—In the case of—

[(1) an organization to which section 593 applies,

[(2) a regulated investment company or a real estate investment trust subject to taxation under subchapter M (section 851 and following), and

[(3) a cooperative organization described in section 1381(a), rules similar to the rules provided in subsections (e) and (h) of section 46 shall apply under regulations prescribed by the Secretary.

[(g) Special Rules for Controlled Groups.—

[(1) Controlled group of corporations.—For purposes of this subpart, all employees of all corporations which are members of the same controlled group of corporations shall be treated as employed by a single employer. In any such case, the credit (if any) allowable by section 40 to each such shall be its proportionate share of the work incentive program expenses giving rise to such credit. For purposes of this subsection, the term "controlled group of corporations" has the meaning given to such term by section 1563(a), except that—

[(A) "more than 50 percent" shall be substituted for "at least 80 percent" each place it appears in section 1563(a)(1), and

[(B) the determination shall be made without regard to subsections (a)(4) and (e)(3)(C) of section 1563.

[(2) Employees of partnerships, proprietorships, etc., which are under common control.—For purposes of this subpart, under regulations precribed by the Secretary—

[(A) all employees of trades or businesses (whether or not incorporated) which are under common control shall be treated as employed by a single employer, and

[(B) the credit (if any) allowable by section 40 with respect to each trade or business shall be its proportionate share of the work incentive program expenses giving rise to such credit.

The regulations prescribed under this paragraph shall be based on principles similar to the principles which apply in the case of paragraph (1).

[(h) Eligible Employee.—

[(1) Eligible employee.—For purposes of this subpart the term "eligible employee" means an individual—

[(A) who has been certified by the Secretary of Labor or by the appropriate agency of State or local government as—

[(i) being eligible for financial assistance under part A of title IV of the Social Security Act and as having continually received such financial assistance during the 90-day period which immediately precedes the date on which such individual is hired by the employer, or

[(ii) having been placed in employment under a work incentive program established under section 432(b)(1) of the Social Security Act, [(B) who has been employed by the taxpayer for a period in excess of 30 consecutive days on a substantially full-time basis (except as provided in subsection (i)),

[(C) who has not displaced any other individual from employment by the taxpayer, and

[(D) who is not a migrant worker.

The term "eligible employee" includes an employee of the taxpayer whose services are not performed in connection with a trade or business of the taxpayer.

[(2) Migrant worker.—For purposes of paragraph (1), the term "migrant worker" means an individual who is employed for services for which the customary period of employment by one employer is less than 30 days if the nature of such services requires that such individual travel from place to place over a short period of time.

[(i) Special Rules With Respect to Employment of Day Care Workers.—

[(1) Eligible employee.—An individual who would be an "eligible employee" (as that term is defined for purposes of this section) except for the fact that such individual's employment is not on a substantially full-time basis, shall be deemed to be an eligible employee as so defined, if such employee's employment is related to the provision of child day care services and is performed on either a full-time or part-time basis.

[(2) Alternative computation with respect to child day care services eligible employees paid from funds made available under title XX of the Social Security Act.—The amount of the credit allowed a taxpayer under section 40, as determined under section 50A and the preceding provisions of this section, with respect to work incentive program expenses paid or incurred by him with respect to an eligible employee whose services are performed in connection with a child day care services program conducted by the taxpayer, and with respect to whom the taxpayer is reimbursed (in whole or in part) from funds made available pursuant to section 2007 of the Social Security Act at the option of the taxpayer shall be equal to 100 percent of the unreimbursed wages paid or incurred by the taxpayer with respect to such employee, but not more than the amount of the limitation in paragraph (4).

[(3) Unreimbursed wages.—For purposes of this subsection, the term "unreimbursed wages" means work incentive program expenses for which the taxpayer was not reimbursed under section 2007 of the Social Security Act or under any other grant or program.

[(4) Limitation.—The amount of the credit, as determined under paragraph (2), with respect to any employee shall not exceed the lesser of—

[(A) an amount equal to $6,000 minus the amount of the funds reimbursed to the taxpayer with respect to such employee from funds made available pursuant to section 2007 of the Social Security Act; or

[(B) with respect to work incentive program expenses attributable to service rendered—

[(i) during the one-year period which begins on the day such employee begins work for the taxpayer, an amount equal to the lesser of—

[(I) $3,000, or

[(II) 50 percent of the sum of the amount of the unreimbursed wages of such employee and the amount reimbursed to the taxpayer with respect to such employee from funds made available pursuant to section 2007 of the Social Security Act; or

[(ii) during the one-year period which begins on the day after the last day of the one-year period described in clause (i), an amount equal to the lesser of—

[(I) $1,500, or

[(II) 25 percent of the sum of the amount of the unreimbursed wages of such employee and the amount reimbursed to the taxpayer with respect to such employee from funds made available pursuant to section 2007 of the Social Security Act.

[(j) CROSS REFERENCE.—

For application of this subpart to certain acquiring corporations see section 381(c)(24).]

Subpart [D] *F*—Rules for Computing [Credit for Employment of Certain New Employees] Targeted Jobs Credit

Sec. 51. Amount of credit.
Sec. 52. Special rules.
[Sec. 53. Limitation based on amount of tax.]

SEC. 51. AMOUNT OF CREDIT.

[(a) DETERMINATION OF AMOUNT.—The amount of the credit allowable by section 44B for the taxable year shall be the sum of—

[(1) 50 percent of the qualified first-year wages for such year, and

[(2) 25 percent of the qualified second-year wages for such year.]

[*(a) DETERMINATION OF AMOUNT.—For purposes of section 38, the amount of the targeted jobs credit determined under this section for the taxable year shall be the sum of—*

[*(1) 50 percent of the qualified first-year wages for such year, and*

[*(2) 25 percent of the qualified second-year wages for such year.*

* * * * * * *

(d) MEMBERS OF TARGETED GROUPS.—For purposes of this subpart—

(1) IN GENERAL.— * * *

* * * * * * *

(6) GENERAL ASSISTANCE RECIPIENTS.—

(A) IN GENERAL.—The term "general assistance recipient" means any individual who is certified by the designated local agency as receiving assistance under a qualified general assistance program for any period of not less than 30 days ending within the preemployment period.

(B) QUALIFIED GENERAL ASSISTANCE PROGRAM.—The term "qualified general assistance program" means any program of a State or a political subdivision of a State—

(i) which provides general assistance or similar assistance which—

(I) is based on need, and

(II) consists of money payments or voucher or scrip, and

(ii) which is designated by the Secretary (after consultation with the Secretary of [Health, Education, and Welfare] *Health and Human Services*) as meeting the requirements of clause (i).

* * * * * * *

(g) UNITED STATES EMPLOYMENT SERVICE TO NOTIFY EMPLOYERS OF AVAILABILITY OF CREDIT.—The United States Employment Service, in consultation with the Internal Revenue Service, shall take such steps as may be necessary or appropriate to keep employers apprised of the availability of [the credit provided by section 44B] *the targeted jobs credit determined under this subpart.*

* * * * * * *

(j) ELECTION TO HAVE TARGETED JOBS CREDIT NOT APPLY.—

(1) IN GENERAL.—A taxpayer may elect to have this section not apply for any taxable year.

(2) TIME FOR MAKING ELECTION.—An election under subsection (a) for any taxable year may be made (or revoked) at any time before the expiration of the 3-year period beginning on the last date prescribed by law for filing the return for such taxable year (determined without regard to extensions).

(3) MANNER OF MAKING ELECTION.—An election under subsection (a) (or revocation thereof) shall be made in such manner as the Secretary may by regulations prescribe.

SEC. 52. SPECIAL RULES.

(a) CONTROLLED GROUP OF CORPORATIONS.—For purposes of this subpart, all employees of all corporations which are members of the same controlled group of corporations shall be treated as employed by a single employer. In any such case, [the credit (if any) allowable by section 44B to each such member] *the credit (if any) determined under section 51(a) with respect to each such member* shall be its proportionate share of the wages giving rise to such credit. For purposes of this subsection, the term "controlled group of corporations" has the meaning given to such term by section 1563(a), except that—

(1) "more than 50 percent" shall be substituted for "at least 80 percent" each place it appears in section 1563(a)(1), and

(2) the determination shall be made without regard to subsections (a)(4) and (e)(3)(C) of section 1563.

(b) EMPLOYEES OF PARTNERSHIPS, PROPRIETORSHIPS, ETC., WHICH ARE UNDER COMMON CONTROL.—For purposes of this subpart, under regulations prescribed by the Secretary—

(1) all employees of trades or business (whether or not incorporated) which are under common control shall be treated as employed by a single employer, and

(2) [the credit (if any) allowable by section 44B] *the credit (if any) determined under section 51(a)* with respect to each trade or business shall be its proportionate share of the wages giving rise to such credit.

The regulations prescribed under this subsection shall be based on principles similar to the principles which apply in the case of subsection (a).

(c) Tax-Exempt Organizations.—No [credit shall be allowed under section 44B] *credit shall be allowed under section 38 for any targeted jobs credit determined under this subpart* to any organization (other than a cooperative described in section 521) which is exempt from income tax under this chapter.

(d) Estates and Trusts.—In the case of an estate or trust—

(1) the amount of the credit determined under this subpart for any taxable year shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each, and

(2) any beneficiary to whom any amount has been apportioned under paragraph (1) shall be allowed, subject to section [53,] *38(c),* a credit under section [44B] *38(a)* for such amount.

(e) Limitations With Respect to Certain Persons.—Under regulations prescribed by the Secretary, in the case of—

(1) an organization to which section 593 (relating to reserves for losses on loans) applies,

(2) a regulated investment company or a real estate investment trust subject to taxation under subchapter M (section 851 and following), and

(3) a cooperative organization described in section 1381(a), rules similar to the rules provided in subsections (e) and (h) of section 46 shall apply in determining the amount of the credit under this subpart.

[SEC. 53. LIMITATION BASED ON AMOUNT OF TAX.

[(a) General Rule.—Notwithstanding section 51, the amount of the credit allowed by section 44B for the taxable year shall not exceed *90 percent of the excess of the tax imposed by this chapter for the taxable year over* the sum of the credits allowable under—

[(1) section 33 (relating to foreign tax credit),

[(2) section 37 (relating to credit for the elderly and the permanently and totally disabled),

[(3) section 38 (relating to investment in certain depreciable property),

[(4) section 40 (relating to expenses of work incentive programs),

[(5) section 41 (relating to contributions to candidates for public office),

[(6) section 42 (relating to general tax credit), and

[(7) section 44A (relating to expenses for household and dependent care services necessary for gainful employment).]

For purposes of this subsection, any tax imposed for the taxable year by section 56 (relating to corporate minimum tax), section 72(m)(5)(B) (relating to 10 percent tax on premature distributions to owner-employees), section 72(q)(1) (relating to 5-percent tax on premature distributions under annuity contracts), section 408(f) (relating to additional tax on income from certain retirement accounts), section 402(e) (relating to tax on lump-sum distributions), section 531 (relating to accumulated earnings tax), section 541 (relating to personal holding company tax), or section 1374 (relating to tax on certain capital gains of S corporations), and any additional tax imposed for the taxable year by section 1351(d)(1) (relating to recoveries of foreign expropriation losses), shall not be considered tax imposed by this chapter for such year.

[(b) Carryback and Carryover of Unused Credit.—

[(1) Allowance of Credit.—If the amount of the credit determined under section 51 for any taxable year exceeds the limitation provided by subsection (a) for such taxable year (hereinafter in this subsection referred to as the "unused credit year"), such excess shall be—

[(A) a new employee credit carryback to each of the 3 taxable years preceding the unused credit year, and

[(B) a new employee credit carryover to each of the 15 taxable years following the unused credit year,]

and shall be added to the amount allowable as a credit by section 44B for such years. If any portion of such excess is a carryback to a taxable year beginning before January 1, 1977, section 44B shall be deemed to have been in effect for such taxable year for purposes of allowing such carryback as a credit under such section. The entire amount of unused credit for an unused credit years shall be carried to the earliest of the 18 taxable year to which (by reason of subparagraphs (A) and (B)) such credit may be carried, and then to each of the other 17 taxable years to the extent that, because of the limitation contained in paragraph (2), such unused credit may not be added for a prior taxable year to which such unused credit may be carried.

[(2) Limitation.—The amount of the unused credit which may be added under paragraph (1) for any preceding or succeeding taxable year shall not exceed the amount by which the limitation provided by subsection (a) for such taxable year exceeds the sum of—

[(A) the credit allowable under section 44B for such taxable year, and

[(B) the amounts which, by reason of this subsection, are added to the amount allowable for such taxable year and which are attributable to taxable years preceding the unused credit year.]

PART VI—MINIMUM TAX FOR TAX PREFERENCES

Sec. 55. Alternative minimum tax for taxpayers other than corporations.
Sec. 56. Corporate minimum tax.
Sec. 57. Items of tax preference.
Sec. 58. Rules for application of this part.

SEC. 55. ALTERNATIVE MINIMUM TAX FOR TAXPAYERS OTHER THAN CORPORATIONS.

(a) Tax Imposed.—In the case of a taxpayer other than a corporation, there is imposed (in addition to any other tax imposed by this subtitle) a tax equal to the excess (if any) of—

(1) an amount equal to 20 percent of so much of the alternative minimum taxable income as exceeds the exemption amount, over

(2) the regular tax for the taxable year.

(b) ALTERNATIVE MINIMUM TAXABLE INCOME.—For purposes of this title, the term "alternative minimum taxable income" means the adjusted gross income (determined without regard to the deduction allowed by section 172) of the taxpayer for the taxable year—

(1) reduced by the sum of—

(A) the alternative tax net operating loss deduction, plus

(B) the alternative tax itemized deductions, plus

(C) any amount included in income under section 667, and

(2) increased by the amount of items of tax preference.

(c) CREDITS.—

(1) IN GENERAL.—For purposes of determining any credit allowable under subpart A, *B, or D* of part IV of this subchapter (other than the foreign tax credit allowed under section **[**33**]** *27*(a))—

(A) the tax imposed by this section shall not be treated as a tax imposed by this chapter, and

(B) the amount of the foreign tax credit allowed by section **[**33**]** *27*(a) shall be determined without regard to this section.

(2) FOREIGN TAX CREDIT ALLOWED AGAINST ALTERNATIVE MINIMUM TAX.—

(A) DETERMINATION OF FOREIGN TAX CREDIT.—The total amount of the foreign tax credit which can be taken against the tax imposed by subsection (a) shall be determined under subpart A of part III of subchapter N (section 901 and following).

(B) INCREASE IN AMOUNT OF FOREIGN TAXES TAKEN INTO ACCOUNT.—For purposes of the determination provided by subparagraph (A), the amount of the taxes paid or accrued to foreign countries or possessions of the United States during the taxable year shall be increased by an amount equal to the lesser of—

(i) the foreign tax credit allowable under section **[**33**]** *27*(a) in computing the regular tax for the taxable year, or

(ii) the tax imposed by subsection (a).

(C) SECTION 904(a) LIMITATION.—For purposes of the determination provided by subparagraph (A), the limitation of section 904(a) shall be an amount equal to the same proportion of the sum of the tax imposed by subsection (a) against which such credit is taken and the regular tax as—

(i) the taxpayer's alternative minimum taxable income from sources without the United States (but not in excess of the taxpayer's entire alternative minimum taxable income), bears to

(ii) his entire alternative minimum taxable income.

For such purpose, the amount of the limitation of section 904(a) shall not exceed the tax imposed by subsection (a).

(D) DEFINITION OF ALTERNATIVE MINIMUM TAXABLE INCOME FROM SOURCES WITHOUT THE UNITED STATES.—For purposes of subparagraph (C), the term "alternative minimum taxable income from sources without the United States" means adjusted gross income from sources without the United States, adjusted as provided in paragraphs (1) and (2) of subsection (b) (taking into account in such adjustment only items described in such paragraphs which are properly attributable to items of gross income from sources without the United States).

(E) SPECIAL RULE FOR APPLYING SECTION 904(c).—In determining the amount of foreign taxes paid or accrued during the taxable year which may be deemed to be paid or accrued in a preceding or succeeding taxable year under section 904(c)—

(i) the limitation of section 904(a) shall be increased by the amount of the limitation determined under subparagraph (C), and

(ii) any increase under subparagraph (B) shall be taken into account.

[(3) CARRYOVER AND CARRYBACK OF CERTAIN CREDITS.—

[(A) IN GENERAL.—In the case of any taxable year in which a tax is imposed by this section, for purposes of determining the amount of any carryback or carryover of any applicable credit to any other taxable year, the amount of the applicable credit limitation for such taxable year shall be deemed to be—

[(i) the amount of the applicable credit allowable for such taxable year (determined without regard to this paragraph), reduced (but not below zero) by

[(ii) the amount of the tax imposed by this section for the taxable year, reduced by—

[(I) the amount of the credit allowable under section 33(a), and

[(II) the amount of such tax taken into account under this clause with respect to any applicable credit having a lower number or letter designation.

[(B) APPLICABLE CREDITS, ETC.—For purposes of this paragraph—

[(i) APPLICABLE CREDIT.—The term "applicable credit" means any credit allowable under section 38, 40, 44B, 44C, 44E, or 44F.

[(ii) APPLICABLE CREDIT LIMITATION.—The term "applicable credit limitation" means, with respect to any applicable credit, the limitation under section 46(a)(3), 53(a), 44C(b)(5), 44E(e)(1), 44F(g)(1), or 50A(a)(2), whichever is appropriate.]

(3) CARRYOVER AND CARRYBACK OF CERTAIN CREDITS.—In the case of any taxable year for which a tax is imposed by this section, for purposes of determining the amount of any carryover or carryback to any other taxable year of any credit allowable under section 23, 25, 30, or 38, the amount of the limitation

under section 26, 30(g), or 38(c) (as the case may be) shall be deemed to be—

(A) the amount of such limitation for such taxable year (determined without regard to this paragraph), reduced (but not below zero) by

(B) the amount of the tax imposed by this section for the taxable year, reduced by—

(i) the amount of the credit allowable under section 27(a),

(ii) in the case of the limitation under section 30(g), the amount of such tax taken into account under this subparagraph with respect to the limitation under section 26, and

(iii) in the case of the limitation under section 38(c), the amount of such tax taken into account under this subparagraph with respect to limitations under sections 26 and 30(g).

* * * * * * *

(f) OTHER DEFINITIONS.—For purposes of this section—

(1) EXEMPTION AMOUNT.—The term "exemption amount" means—

(A) $40,000 in the case of—

(i) a joint return, or

(ii) a surviving spouse (as defined in section 2(a)),

(B) $30,000 in the case of an individual who—

(i) is not a married individual (as defined in section 143), and

(ii) is not a surviving spouse (as so defined), and

(C) $20,000 in the case of—

(i) a married individual (as so defined) who files a separate return, or

(ii) an estate or trust.

(2) REGULAR TAX.—The term "regular tax" means the taxes imposed by this chapter for the taxable year (computed without regard to this section and without regard to the taxes imposed by sections *47(a),* 72(m)(5)(B), 72(q), 402(e), 408(f), [409(c),] and 667(b)) reduced by the sum of the credits allowable under [subpart A of part IV of this subchapter (other than under sections 31, 39, and 43)] *subparts A, B, and D of part IV of this subchapter. For purposes of this paragraph, the amount of the credits allowable under such subpart shall be determined without regard to this section.*

* * * * * * *

SEC. 56. CORPORATE MINIMUM TAX.

(a) GENERAL RULE.—In addition to the other taxes imposed by this chapter, there is hereby imposed for each taxable year, with respect to the income of every corporation, a tax equal to 15 percent of the amount by which the sum of the items of tax preference exceeds the greater of—

(1) $10,000, or

(2) the regular tax deduction for the taxable year (as determined under subsection (c)).

(b) **Deferral of Tax Liability in Case of Certain Net Operating Losses**—

(1) **In general.**—If for any taxable year a corporation—

(A) has a net operating loss any portion of which (under section 172) remains as a net operating loss carryover to a succeeding taxable year, and

(B) has items of tax preference in excess of $10,000,

then an amount equal to the lesser of the tax imposed by subsection (a) or 15 percent of the amount of the net operating loss carryover described in subparagraph (A) shall be treated as tax liability not imposed for the taxable year, but as imposed for the succeeding taxable year or years pursuant to paragraph (2).

(2) **Year of liability.**—In any taxable year in which any portion of the net operating loss carryover attributable to the excess described in paragraph (1)(B) reduces taxable income, the amount of tax liability described in paragraph (1) shall be treated as tax liability imposed in such taxable year in an amount equal to 15 percent of such reduction.

(3) **Priority of application.**—For purposes of paragraph (2), if any portion of the net operating loss carryover described in paragraph (1)(A) is not attributable to the excess described in paragraph (1)(B), such portion shall be considered as being applied in reducing taxable income before such other portion.

(c) **Regular Tax Deduction Defined.**—For purposes of this section, the term "regular tax deduction" means an amount equal to the taxes imposed by this chapter for the taxable year (computed without regard to this part and without regard to the taxes imposed by sections 531 and 541), reduced by the sum of the credits allowable under [subpart A of part IV other than sections 39 and 44G] subparts A, B, and D of part IV. For purposes of the preceding sentence, the amount of the credit [allowable under section 38 shall be determined without regard to the employee plan percentage set forth in section 46(a)(2)(E)] *determined under section 38 for any taxable year shall be determined without regard to the employee stock ownership credit determined under section 41.*

* * * * * * *

(e) **Tax Carryover for Timber.**—

(1) **In general.**—In the case of a corporation, if for any taxable year, including a taxable year beginning before January 1, 1976—

(A) the taxes imposed by this chapter (computed without regard to this part and without regard to the tax imposed by section 531) which, under regulations prescribed by the Secretary, are attributable to income from timber, reduced by the sum of the credits allowable under—

[(i) section 33 (relating to foreign tax credit),

[(ii) section 38 (relating to investment credit),

[(iii) section 40 (relating to expenses of work incentive programs), and

[(iv) section 44B (relating to credit for employment of certain new employees), exceed]

(i) section 27 (relating to foreign tax credit), and

(ii) section 38 (relating to general business credit), exceed

(B) the items of tax preference (as determined under section 57),

the excess of the taxes described in subparagraph (A) over the items of tax preference shall be a tax carryover to each of the 7 taxable years following such year. The entire amount of the excess shall be carried to the first of such 7 taxable years, and then to each of the other such taxable years to the extent that such excess is not used to reduce the amount subject to tax under subsection (a) for a prior taxable year to which such excess may be carried.

(2) Limitation.—The amount of any carryover under paragraph (1) which may be deducted in a taxable year shall be limited to—

(A) the excess of—

(i) the amount of timber preference income for the taxable year (as defined in section 57(e)), over

(ii) the amount determined under section 57(a)(9)(C) for the taxable year,

(B) reduced by the excess of—

(i) the regular tax deduction for the taxable year (as determined under subsection (c) without regard to this subsection), over

(ii) the amount determined under subsection (d) for the taxable year.

SEC. 57. ITEMS OF TAX PREFERENCE.

(a) In General.—For purposes of this part, the items of tax preference are—

(1) * * *

* * * * * * *

(6) Circulation and research and experimental expenditures.—An amount equal to the excess of—

(A) the amount allowable as a deduction under section 173 or 174(a) for the taxable year, over

[(B) the amount which would have been allowable for the taxable year if the circulation expenditures described in section 173 or the research and experimental expenditures described in section 174 had been capitalized and amortized ratably over the 10-year period beginning with the taxable year in which such expenditures were made]

(B) the amount which would have been allowable for the taxable year if—

(i) the circulation expenditures described in section 173 had been capitalized and amortized ratably over the 3-year period beginning with the taxable year in which such expenditures were made, or

(ii) the research and experimental expenditures described in section 174 had been capitalized and amortized ratably over the 10-year period beginning with the taxable year in which such expenditures were made.

* * * * * * *

(12) Accelerated cost recovery deduction.—

(A) In general.—With respect to each recovery property (other than 15-year real property) which is subject to a lease, the amount (if any) by which the deduction allowed under section 168(a) [(or, in the case of property described in section 167(k), under section 167)] for the taxable year exceeds the deduction which would have been allowable for the taxable year had the property been depreciated using the straight-line method (with a half-year convention and without regard to salvage value) and a recovery period determined in accordance with ther following table:

In the case of:	*The recovery period is:*
3-year property	5 years.
5-year property	8 years.
10-year property	15 years.
15-year public utility property	22 years.

(B) 15-year real property.—With respect to each recovery property which is 15-year real property, the amount (if any) by which the deduction allowed under section 168(a) *(or, in the case of property described in section 167(k), under section 167)* for the taxable year exceeds the deduction which would have been allowable for the taxable year had the property been depreciated using a 15-year period and the straight-line method (without regard to salvage value).

(C) Subparagraphs (A) and (B) inapplicable where longer recovery periods apply.—If, pursuant to section 168(b)(3) or 168(f)(2), the recovery period for any property is longer than the recovery period for such property set forth in subparagraph (A) or (B), subparagraph (A) or (B) (as the case may be) shall not apply to such property.

(D) Paragraphs (2) and (3) shall not apply.—Paragraphs (2) and (3) shall not apply to recovery property.

(E) Definitions.—For purpose of this paragraph, the terms "3-year property", "5-year property", "10-year property", 15-year public utility property", "15-year real property", and "recovery property", shall have the same meanings given such terms under section 168.

Paragraphs (1), (3), (5), (6), (11), and (12)(A) shall apply to a corporation other than a personal holding company (as defined in section 542).

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SEC. 58. RULES FOR APPLICATION OF THIS PART.

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(i) Optional 10-Year Writeoff of Certain Tax Preferences.—

(1) In general.—For purposes of this title, in the case of an individual, any qualified expenditure to which an election under this paragraph applies shall be allowed as a deduction ratably over the 10-year period *(3-year period in the case of circulation expenditures described in section 173)* beginning with the taxable year in which such expenditure was made.

(2) Qualified expenditure.—For purposes of this subsection, the term "qualified expenditure" means any amount which,

but for an election under this subsection, would have been allowable as a deduction for the taxable year in which paid or incurred under—

(A) section 173 (relating to circulation expenditures),

(B) section 174(a) (relating to research and experimental expenditures),

(C) section 263(c) (relating to intangible drilling and development expenditures),

(D) section 616(a) (relating to development expenditures), or

(E) section 617 (relating to deduction of certain mining exploration expenditures).

(3) OTHER SECTIONS NOT APPLICABLE.—Except as provided in this subsection, no deduction shall be allowed under any other section for any qualified expenditure to which an election under this subsection applies.

(4) SPECIAL ELECTION FOR INTANGIBLE DRILLING AND DEVELOPMENT COSTS NOT ALLOCABLE TO LIMITED BUSINESS INTEREST.—

(A) IN GENERAL.—In the case of any nonlimited partnership intangible drilling costs *(with respect to wells located in the United States)* to which an election under this paragraph applies—

(i) the applicable percentage of such costs (adjusted as provided in section 48(q)) shall be allowed as a deduction for the taxable year in which paid or incurred and for each of the 4 succeeding taxable years, and

(ii) such costs shall be treated, for purposes of determining the amount of the credit allowable under section 38 for the taxable year in which paid or incurred, as qualified investment (within the meaning of subsections (c) and (d) of section 46) with respect to property placed in service during such year.

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Subchapter B—Computation of Taxable Income

Part I. Definition of gross income, adjusted gross income, taxable income, etc.
Part II. Items specifically included in gross income.
Part III. Items specifically excluded from gross income.
Part IV. Determination of marital status.
Part V. Deductions for personal exemptions.
Part VI. Itemized deductions for individuals and corporations.
Part VII. Additional itemized deductions for individuals.
Part VIII. Special deductions for corporations.
Part IX. Items not deductible.
Part X. Terminal railroad corporations and their shareholders.
Part XI. Special rules relating to corporate preference items.

PART I—DEFINITION OF GROSS INCOME, ADJUSTED GROSS INCOME, TAXABLE INCOME, ETC.

Sec. 61. Gross income defined.
Sec. 62. Adjusted gross income defined.
Sec. 63. Taxable income defined.
Sec. 64. Ordinary income defined.
Sec. 65. Ordinary loss defined.
Sec. 66. Treatment of community income where spouses live apart.

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SEC. 62. ADJUSTED GROSS INCOME DEFINED

For purposes of this subtitle, the term "adjusted gross income" means, in the case of an individual, gross income minus the following deductions:

(1) TRADE AND BUSINESS DEDUCTIONS.—The deductions allowed by this chapter (other than by part VII of this subchapter) which are attributable to a trade or business carried on by the taxpayer, if such trade or business does not consist of the performance of services by the taxpayer as an employee.

(2) TRADE AND BUSINESS DEDUCTIONS OF EMPLOYEES.—

(A) REIMBURSED EXPENSES.—The deductions allowed by part VI (sec. 161 and following) which consist of expenses paid or incurred by the taxpayer, in connection with the performance by him of services as an employee, under a reimbursement or other expense allowance arrangement with his employer.

(B) EXPENSES FOR TRAVEL AWAY FROM HOME.—The deductions allowed by part VI (sec. 161 and following) which consist of expenses of travel, meals, and lodging while away from home, paid or incurred by the taxpayer in connection with the performance by him of services as an employee.

(C) TRANSPORTATION EXPENSES.—The deductions allowed by part VI (sec. 161 and following) which consist of expenses of transportation paid or incurred by the taxpayer in connection with the performance by him of services as an employee.

(D) OUTSIDE SALESMEN.—The deductions allowed by part VI (sec. 161 and following) which are attributable to a trade or business carried on by the taxpayer, if such trade or business consists of the performance of services by the taxpayer as an employee and if such trade or business is to solicit, away from the employer's place of business, business for the employer.

(3) LONG-TERM CAPITAL GAINS.—The deduction allowed by section 1202.

(4) LOSSES FROM SALE OR EXCHANGE OF PROPERTY.—The deductions allowed by part VI (sec. 161 and following) as losses from the sale or exchange of property.

(5) DEDUCTIONS ATTRIBUTABLE TO RENTS AND ROYALTIES.—The deductions allowed by part VI (sec. 161 and following), by section 212 (relating to expenses for production of income), and by section 611 (relating to depletion) which are attributable to property held for the production of rents or royalties.

(6) CERTAIN DEDUCTIONS OF LIFE TENANTS AND INCOME BENEFICIARIES OF PROPERTY.—In the case of a life tenant of property, or an income beneficiary of property held in trust, or an heir, legatee, or devisee of an estate, the deduction for depreciation allowed by section 167 and the deduction allowed by section 611.

(7) PENSION, PROFIT-SHARING, [ANNUITY, AND BOND PURCHASE] *AND ANNUITY* PLANS OF SELF-EMPLOYED INDIVIDUALS.—In the case of an individual who is an employee within the meaning of section 401(c)(1), the [deductions allowed by sec-

tion 404 and section 405(c)] to the extent attributable to contributions made on behalf of such individual.

(8) **Moving expense deduction.**—The deduction allowed by section 217.

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SEC. 66. TREATMENT OF COMMUNITY INCOME WHERE SPOUSES LIVE APART.

(a) **General Rule.**—If—

(1) 2 individuals are married to each other at any time during a calendar year;

(2) such individuals—

(A) live apart at all times during the calendar year, and

(B) do not file a joint return under section 6013 with each other for a taxable year beginning or ending in the calendar year;

(3) one or both of such individuals have earned income for the calendar year which is community income; and

(4) no portion of such earned income is transferred (directly or indirectly) between such individuals before the close of the calendar year,

then, for purposes of this title, any community income of such individuals for the calendar year shall be treated in accordance with the rules provided by section 879(a).

(b) Spouse Relieved of Liability in Certain Other Cases.—Under regulations prescribed by the Secretary, if—

(1) an individual does not file a joint return for any taxable year,

(2) such individual does not include in gross income for such taxable year an item of community income properly includible therein which, in accordance with the rules contained in section 879(a), would be treated as the income of the other spouse,

(3) the individual establishes that he or she did not know of, and had no reason to know of, such item of community income, and

(4) taking into account all facts and circumstances, it is inequitable to include such item of community income in such individual's gross income,

then, for purposes of this title, such items of community income shall be included in the gross income of the other spouse (and not in the gross income of the individual).

[(b)] *(c)* **Definitions.**—For purposes of this section—

(1) **Earned income.**—The term "earned income" has the meaning given to such term by section 911(b).

(2) **Community income.**—The term "community income" means income which, under applicable community property laws, is treated as community income.

(3) **Community property laws.**—The term "community property laws" means the community property laws of a State, a foreign country, or a possession of the United States.

PART II—ITEMS SPECIFICALLY INCLUDED IN GROSS INCOME

Sec. 71. Alimony and separate maintenance payments.
Sec. 72. Annuities; certain proceeds of endowment and life insurance contracts.
Sec. 73. Services of child.
Sec. 74. Prizes and awards.
Sec. 75. Dealers in tax-exempt securities.
Sec. 77. Commodity credit loans.
Sec. 78. Dividends received from certain foreign corporations by domestic corporations choosing foreign tax credit.
Sec. 79. Group-term life insurance purchased for employees.
Sec. 80. Restoration of value of certain securities.
Sec. 81. Certain increases in suspense accounts.
Sec. 82. Reimbursement for expenses of moving.
Sec. 83. Property transferred in connection with performance of services.
Sec. 84. Transfer of appreciated property to political organization.
Sec. 85. Unemployment compensation.
Sec. 86. Social security and tier 1 railroad retirement benefits.
Sec. 87. Alcohol fuel credit.

[SEC. 71. ALIMONY AND SEPARATE MAINTENANCE PAYMENTS.

[(a) GENERAL RULE.—

[(1) DECREE OF DIVORCE OR SEPARATE MAINTENANCE.—If a wife is divorced or legally separated from her husband under a decree of divorce or of separate maintenance, the wife's gross income includes periodic payments (whether or not made at regular intervals) received after such decree in discharge of (or attributable to property transferred, in trust or otherwise, in discharge of) a legal obligation which, because of the marital or family relationship, is imposed on or incurred by the husband under the decree or under a written instrument incident to such divorce or separation.

[(2) WRITTEN SEPARATION AGREEMENT.—If a wife is separated from her husband and there is a written separation agreement executed after the date of the enactment of this title, the wife's gross income includes periodic payments (whether or not made at regular intervals) received after such agreement is executed which are made under such agreement and because of the marital or family relationship (or which are attributable to property transferred, in trust or otherwise, under such agreement and because of such relationship). This paragraph shall not apply if the husband and wife make a single return jointly.

[(3) DECREE FOR SUPPORT.—If a wife is separated from her husband, the wife's gross income includes periodic payments (whether or not made at regular intervals) received by her after the date of the enactment of this title from her husband under a decree entered after March 1, 1954, requiring the husband to make the payments for her support or maintenance. This paragraph shall not apply if the husband and wife make a single return jointly.

[(b) PAYMENTS TO SUPPORT MINOR CHILDREN.—Subsection (a) shall not apply to that part of any payment which the terms of the decree, instrument, or agreement fix, in terms of an amount of money or a part of the payment, as a sum which is payable for the support of minor children of the husband. For purposes of the preceding sentence, if any payment is less than the amount specified in the decree, instrument, or agreement, then so much of such payment as does not exceed the sum payable for support shall be considered a payment for such support.

[(c) PRINCIPAL SUM PAID IN INSTALLMENTS.—

[(1) GENERAL RULE.—For purposes of subsection (a), installment payments discharging a part of an obligation the principal sum of which is, either in terms of money or property, specified in the decree, instrument, or agreement shall not be treated as periodic payments.

[(2) WHERE PERIOD FOR PAYMENT IS MORE THAN 10 YEARS.—If, by the terms of the decree, instrument, or agreement, the principal sum referred to in paragraph (1) is to be paid or may be paid over a period ending more than 10 years from the date of such decree, instrument, or agreement, then (notwithstanding paragraph (1)) the installment payments shall be treated as periodic payments for purposes of subsection (a), but (in the case of any one taxable year of the wife) only to the extent of 10 percent of the principal sum. For purposes of the preceding sentence, the part of any principal sum which is allocable to a period after the taxable year of the wife in which it is received shall be treated as an installment payment for the taxable year in which it is received.

[(d) RULE FOR HUSBAND IN CASE OF TRANSFERRED PROPERTY.—The husband's gross income does not include amounts received which, under subsection (a), are (1) includible in the gross income of the wife, and (2) attributable to transferred property.

[(e) CROSS REFERENCES.—

[(1) For definitions of "husband" and "wife", see section 7701(a)(17).

[(2) For deduction by husband of periodic payments not attributable to transferred property, see section 215.

[(3) For taxable status of income of an estate or trust in case of divorce, etc., see section 682.]

SEC. 71. ALIMONY AND SEPARATE MAINTENANCE PAYMENTS.

(a) GENERAL RULE.—Gross income includes amounts received as alimony or separate maintenance payments.

(b) ALIMONY OR SEPARATE MAINTENANCE PAYMENTS DEFINED.—For purposes of this section—

(1) IN GENERAL.—The term "alimony or separate maintenance payment" means any payment in cash if—

(A) such payment is received by or on behalf of a spouse under a divorce or separation instrument,

(B) the divorce or separation instrument does not designate such payment as a payment which is not includible in gross income under this section and not allowable as a deduction under section 215,

(C) in the case of an individual legally separated from his spouse under a decree of divorce or of separate maintenance, the payee spouse and the payor spouse are not members of the same household at the time such payment is made, and

(D) there is not liability to make any such payment for any period after the death of the payee spouse and there is no liability to make any payment (in cash or property) as a

substitute for such payments after the death of the payee spouse.

(2) DIVORCE OR SEPARATION INSTRUMENT.—The term "divorce or separation instrument" means—

(A) a decree of divorce or separate maintenance or a written instrument incident to such a decree,

(B) a written separation agreement, or

(C) a decree (not described in subparagraph (A)) requiring a spouse to make payments for the support or maintenance of the other spouse.

(c) PAYMENTS TO SUPPORT MINOR CHILDREN.—Subsection (a) shall not apply to that part of any payment which the terms of the divorce or separation instrument fix (in terms of an amount of money or a part of the payment) as a sum which is payable for the support of minor children of the spouses. For purposes of the preceding sentence, if any payment is less than the amount specified in the instrument, then so much of such payment as does not exceed the sum payable for support shall be considered a payment for such support.

(d) SPOUSE.—For purposes of this section, the term "spouse" includes a former spouse.

(e) EXCEPTION FOR JOINT RETURNS.—This section and section 215 shall not apply if the spouses make a joint return with each other.

(f) RECOMPUTATION WHERE EXCESS FRONT-LOADING OF ALIMONY PAYMENTS.—

(1) IN GENERAL.—In any case where there are excess alimony payments—

(A) the payor spouse shall include the amount of such excess payments in gross income for the payor spouse's taxable year beginning in the 3rd post-separation year, and

(B) the payee spouse shall be allowed a deduction in computing adjusted gross income for the amount of such excess payments for the payee's taxable year beginning in the 3rd post-separation year.

(2) EXCESS ALIMONY PAYMENTS.—For purposes of this subsection, the term "excess alimony payments" means the sum of—

(A) the excess payments for the 1st post-separation year, and

(B) the excess payments for the 2nd post-separation year.

(3) EXCESS PAYMENTS FOR 1ST POST-SEPARATION YEAR.—For purposes of this subsection, the amount of the excess payments for the 1st post-separation year is the excess (if any) of—

(A) the amount of the alimony or separate maintenance payments paid by the payor spouse during the 1st post-separation year, over

(B) the sum of—

(i) the average of—

(I) the alimony or separate maintenance payments paid by the payor spouse during the 2nd post-separation year, reduced by the excess payments for the 2nd post-separation year, and

(II) the alimony or separate maintenance payments paid by the payor spouse during the 3rd post-separation year, plus

(ii) $15,000.

(4) EXCESS PAYMENTS FOR 2ND POST-SEPARATION YEAR.—For purposes of this subsection, the amount of the excess payments for the 2nd post-separation year is the excess (if any) of—

(A) the amount of the alimony or separate maintenance payments paid by the payor spouse during the 2nd post-separation year, over

(B) the sum of—

(i) the amount of the alimony or separate maintenance payments paid by the payor spouse during the 3rd post-separation year, plus

(ii) $15,000.

(5) EXCEPTIONS.—

(A) DEATH OR REMARRIAGE.—Paragraph (1) shall not apply if—

(i) either spouse dies before the close of the 3rd post-separation year, or

(ii) the payee spouse remarries before the close of the 3rd post-separation year.

(B) SUPPORT PAYMENTS.—For purposes of this subsection, the term "alimony or separate maintenance payment" shall not include any payment received under a decree described in subsection (b)(2)(C).

(C) FLUCTUATING PAYMENTS NOT WITHIN CONTROL OF PAYOR SPOUSE.—For purposes of this subsection, the term "alimony or separate maintenance payment" shall not include any payment to the extent it is made pursuant to a continuing liability (over a period of not less than 3 years) to pay a fixed portion of the income from a business or property or from compensation for employment or self-employment.

(6) POST-SEPARATION YEARS.—For purposes of this subsection, the term "1st post-separation year" means the 1st calendar year in which the payor spouse paid to the payee spouse alimony or separate maintenance payments to which this section applies. The 2nd and 3rd post-separation years shall be the 1st and 2nd succeeding calendar years, respectively.

SEC. 72. ANNUITIES; CERTAIN PROCEEDS OF ENDOWMENT AND LIFE INSURANCE CONTRACTS.

(a) GENERAL RULE FOR ANNUITIES.—* * *

* * * * * * *

(e) AMOUNTS NOT RECEIVED AS ANNUITIES.—

(1) APPLICATION OF SUBSECTION.—

(A) IN GENERAL.—This subsection shall apply to any amount which—

(i) is received under an annuity, endowment, or life insurance contract, and

(ii) is not received as an annuity, if no provision of this subtitle (other than this subsection) applies with respect to such amount.

(B) DIVIDENDS.—For purposes of this section, any amount received which is in the nature of a dividend or similar distrubtion shall be treated as an amount not received as an annuity.

(2) GENERAL RULE.—any amount to which this subsection applies—

(A) if received on or after the annuity starting date, shall be included in gross income, or

(B) if received before the annuity starting date—

(i) shall be included in gross income to the extent allocable to income on the contract, and

(ii) shall not be included in gross income to the extent allocable to the investment in the contract.

(3) ALLOCATION OF AMOUNTS TO INCOME AND INVESTMENT.—For purposes of paragraph (2)(B)—

(A) ALLOCATION TO INCOME.—Any amount to which this subsection applies shall be treated as allocable to income on the contract to the extent that such amount does not exceed the excess (if any) of—

(i) the cash value of the contract (determined without regard to any surrender charge) immediately before the amount is received, over

(ii) the investment in the contract at such time.

(B) ALLOCATION TO INVESTMENT.—Any amount to which this subsection applies shall be treated as allocable to investment in the contract to the extent that such amount is not allocated to income under subparagraph (A).

(4) SPECIAL RULES FOR APPLICATION OF PARAGRAPH (2)(B).—For purposes of paragraph (2)(B)—

(A) LOANS TREATED AS DISTRIBUTIONS.—If, during any taxable year, an individual—

(i) receives (directly or indirectly) any amount as a loan under any contract to which this subsection applies, or

(ii) assigns or pledges (or agrees to assign or pledge) any portion of the value of any such contract,

such amount or portion shall be treated as received under the contract as an amount not received as an annuity.

(B) TREATMENT OF POLICYHOLDER DIVIDENDS.—Any amount described in paragraph (1)(B) shall not be included in gross income under paragraph (2)(B)(i) to the extent such amount is retained by the insurer as a premium or other consideration paid for the contract.

(5) RETENTION OF EXISTING RULES IN CERTAIN CASES.—

(A) IN GENERAL.—In any case to which this paragraph applies—

(i) paragraphs (2)(B) and (4)(A) shall not apply, and

(ii) if paragraphs (2)(A) does not apply,

the amount shall be included in gross income, but only to the extent it exceeds the investment in the contract.

(B) EXISTING CONTRACTS.—This paragraph shall apply to contracts entered into before August 14, 1982. Any amount allocable to investment in the contract after August 13, 1982, shall be treated as from a contract entered into after such date.

(C) CERTAIN LIFE INSURANCE AND ENDOWMENT CONTRACTS.—Except to the extent prescribed by the Secretary by regulations, this paragraph shall apply to any amount not received as an annuity which is received under a life insurance or endowment contract.

(D) CONTRACTS UNDER QUALIFIED PLANS.—This paragraph shall apply to any amount received—

(i) from a trust described in section 401(a) which is exempt from tax under section 501(a),

(ii) from a contract—

(I) purchased by a trust described in clause (i),

(II) purchased as part of a plan described in section 403(a),

(III) described in section 403(b), or

(IV) provided for employees of a line insurance company under a plan described in section [805(d)(3)] *818(a)(3),*

(iii) from an individual retirement account or an individual retirement annuity.

(E) FULL REFUNDS, SURRENDERS, REDEMPTIONS, AND MATURITIES.—This paragraph shall apply to—

(i) any amount received, whether in a single sum or otherwise, under a contract in full discharge of the obligation under the contract which is in the nature of a refund of the consideration paid for the contract, and

(ii) any amount received under a contract on its complete surrender, redemption, or maturity.

In the case of any amount to which the preceding sentence applies, the rule of paragraph (2)(A) shall not apply.

* * * * * * *

[(k) PAYMENTS IN DISCHARGE OF ALIMONY.—

[(1) IN GENERAL.—This section shall not apply to so much of any payment under an annuity, endowment, or life insurance contract (or any interest therein) as is includible in the gross income of the wife under section 71 or section 682 (relating to income of an estate or trust in case of divorce, etc.).

[(2) CROSS REFERENCE.—

For definition of "wife", see section 7701(a)(17).]

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(m) SPECIAL RULES APPLICABLE TO EMPLOYEE ANNUITIES AND DISTRIBUTIONS UNDER EMPLOYEE PLANS.—

(1) * * *

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(5) PENALTIES APPLICABLE TO CERTAIN AMOUNTS RECEIVED BY [OWNER-EMPLOYEES.] EMPLOYEES.—

(A) This paragraph shall apply—

(i) to amounts (other than any amount received by an individual in his capacity as a policyholder of an annuity, endowment, or life insurance contract which is in the nature of a dividend or similar distribution) which are received from a qualified trust described in section 401(a) or under a plan described in section

403(a) and which are received by an individual, who is, or has been, a key employee, before such individual attains the age of 59½ years, for any reason other than the individual's becoming disabled (within the meaning of paragraph (7) of this subsection), but only to the extent that such amounts are attributable to contributions paid on behalf of such individual (other than contributions made by him [as an owner-employee] *as a key employee* while he was a key employee in a top-heavy plan, and

(ii) to amounts which are received from a qualified trust described in section 401(a) or under a plan described in section 403(a) at any time by an individual who is, or has been, a key employee, or by the successor of such individual, but only to the extent that such amounts are determined, under regulations prescribed by the Secretary, to exceed the benefits provided for such individual under the plan formula.

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[(9) Return of excess contributions before due date of return.—

[(A) In general.—If an excess contribution is distributed in a qualified distribution—

[(i) such distribution of such excess contribution shall not be included in gross income, and

[(ii) this section (other than this paragraph) shall be applied as if such excess contribution and such distribution had not been made.

[(B) Excess contribution.—For purposes of this paragraph, the term "excess contribution" means any contribution to a qualified trust described in section 401(a) or under a plan described in section 403(a) or 405(a) made on behalf of an employee (within the meaning of section 401(c)) for any taxable year to the extent such contributions exceeds the amount allowable as a deduction under section 404(a).

[(C) Qualified distribution.—The term "qualified distribution" means any distribution of an excess contribution which meets requirements similar to the requirements of subparagraphs (A), (B), and (C) of section 408(d)(4). In the case of such distribution, the rules of the last sentence of section 408(d)(4) shall apply.]

* * * * * * *

(o) Special Rules for Distributions From Qualified Plans to Which Employee Made Deductible Contributions.—

(1) Treatment of contributions.—For purposes of this section and sections [402, 403, and 405] notwithstanding section 414(h), any deductible employee contribution made to a qualified employer plan or government plan shall be treated as an amount contributed by the employer which is not includible in the gross income of the employee.

(2) Additional tax if amount received before age 59⅓.—if—

(A) any accumulated deductible employee contributions are received from a qualified employer plan or government plan,

(B) such amount is received by the employee before the employee attains the age of 59½, and

(C) such amount is not attributable to such employee's becoming disabled (within the meaning of subsection (m)(7)),

then the employee's tax under this chapter for the taxable year in which such amount is received shall be increased by an amount equal to 10 percent of the amount so received to the extent that such amount is includible in gross income. For purposes of this title, any tax imposed by this paragraph shall be treated as a tax imposed by subsection (m)(5)(B).

(3) Amounts constructive received.—

(A) In general.—For purposes of this subsection, rules similar to the rules provided by subsection (p) *(other than the exception contained in paragraph (2) thereof* shall apply.

(B) Purchase of life insurance.—Of the extent amount of accumulated deductible employee contributions of an employee are applied to the purchase of life insurance contracts, such amount shall be treated as distributed to the employee in the year so applied.

(4) Special rule for treatment of rollover amounts.—For purposes of sections 402(a)(5), 402(a)(7), 403(a)(4), [408(d)(3), and 409(b)(3)(C)] *and 408(d)(3),* the Secretary shall prescribe regulations providing for such allocations of amounts attributable to accumulated deductible employee contributions, and for such other rules, as may be necessary to insure that such accumulated deductible employee contributions do not become eligible for additional tax benefits (or freed from limitations) through the use of rollovers.

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(p) Loans Treated as Distributions.—For purposes of this section—

(1) Treatment as distributions.—

(A) Loans.—If during any taxable year a participant or beneficiary receives (directly or indirectly) any amount as a loan from a qualified employer plan, such amount shall be treated as having been received by such individual as a distribution under such plan.

(B) Assignments or pledges.—If during any taxable year a participant or beneficiary assigns (or agrees to assign) or pledges (or agrees to pledge) any portion of his interest in a qualifed employer plan, such portion shall be treated as having been received by such individual as a loan from such plan.

(2) Exception for certain loans.—

(A) General rule.—Paragraph (1) shall not apply to any loan to the extent that such loan (when added to the outstanding balance of all other loans from such plan whether made on, before, or after August 13, 1982), does not exceed the lesser of—

(i) $50,000, or

[(ii) ½ of the present value of the nonforfeitable accrued benefit of the employee under the plan (but not less than $10,000).]

(ii) the greater of (I) one-half of the present value of the nonforfeitable accrued benefit of the employee under the plan, or (II) $10,000.

For purposes of clause (ii), the present value of the nonforfeitable accured benefit shall be determined without regard to any accumulated deductible employee contributions (as defined in subsection (o)(5)(B)).

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(q) 5-PERCENT PENALTY FOR PREMATURE DISTRIBUTIONS FROM ANNUITY CONTRACTS.—

[(1) IMPOSITION OF PENALTY.—

[(A) IN GENERAL.—If any taxpayer receives any amount under an annuity contract, the taxpayer's tax under this chapter for the taxable year in which such amount is received shall be increased by an amount equal to 5 percent of the portion of such amount includible in gross income which is properly allocable to any investment in the annuity contract made during the 10-year period ending on the date such amount was received by the taxpayer.

[(B) ALLOCATION ON FIRST-IN, FIRST-OUT BASIS.—For purposes of subparagraph (A), the amount includible in gross income shall be allocated to the earliest investment in the contract with respect to which amounts have not been previously fully allocated under this paragraph.]

(1) IMPOSITION OF PENALTY.—If any taxpayer receives any amount under an annuity contract, the taxpayer's tax under this chapter for the taxable year in which such amount is received shall be increased by an amount equal to 5 percent of the portion of such amount which is includible in gross income.

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(s) AMOUNT OF ANNUITY CONTRACT TREATED AS DISTRIBUTED WHERE HOLDER DIES BEFORE ANNUITY STARTING DATE.—

(1) IN GENERAL.—If the holder of any annuity contract dies before the annuity starting date, an amount equal to the cash value of such contract (determined without regard to any surrender charge) shall be treated as paid to such holder immediately before his death.

(2) EXCEPTION FOR CONTRACTS UNDER QUALIFIED PLANS.—This subsection shall not apply to any annuity contract described in subsection (e)(5)(D).

(3) BASIS ADJUSTMENT.—For purposes of this section, in the case of any contract under which paragraph (1) applied, the amount includible in gross income by reason of paragraph (1) shall be treated as a premium paid for such contract.

(4) PENALTY NOT TO APPLY.—Subsection (q) shall not apply to any amount includible in gross income by reason of this subsection.

[(s)] *(t)* CROSS REFERENCE.—

For limitation on adjustments to basis of annuity contracts sold, see section 1021.

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SEC. 79. GROUP-TERM LIFE INSURANCE PURCHASED FOR EMPLOYEES.

(a) GENERAL RULE.—There shall be included in the gross income of an employee for the taxable year an amount equal to the cost of group-term life insurance on his life provided for part or all of such year under a policy (or policies) carried directly or indirectly by his employer (or employers); but only to the extent that such cost exceeds the sum of—

(1) the cost of $50,000 of such insurance, and

(2) the amount (if any) paid by the employee toward the purchase of such insurance.

(b) EXCEPTIONS.—Subsection (a) shall not apply to—

[(1) the cost of group-term life insurance on the life of an individual which is provided under a policy carried directly or indirectly by an employer after such individual has terminated his employment with such employer and either has reached the retirement age with respect to such employer or is disabled (within the meaning of section 72(m)(7)),]

(1) the cost of group-term life insurance on the life of an individual which is provided under a policy carried directly or indirectly by an employer after such individual has terminated his employment with such employer and is disabled (within the meaning of section 72(m)(7)),

* * * * * * *

(d) NONDISCRIMINATION REQUIREMENTS.—

[(1) IN GENERAL.—In the case of a discriminatory group-term life insurance plan, paragraph (1) of subsection (a) shall not apply with respect to any key employee.]

(1) IN GENERAL.—In the case of a discriminatory group-term life insurance plan—

(A) subsection (a)(1) shall not apply with respect to any key employee, and

(B) the cost of group-term life insurance on the life of any key employee shall be determined without regard to subsection(c).

* * * * * * *

(e) EMPLOYEE INCLUDES FORMER EMPLOYEE.—For purposes of this section, the term "employee" includes a former employee.

SEC. 80. RESTORATION OF VALUE OF CERTAIN SECURITIES.

(a) GENERAL RULE.—In the case of a domestic corporation subject to the tax imposed by section 11 or [802,] *801,* if the value of any security (as defined in section 165(g)(2))—

(1) which became worthless by reason of the expropriation, intervention, seizure, or similar taking by the government of any foreign country, any political subdivision thereof, or any

agency or instrumentality of the foregoing of property to which such security was related, and

(2) which was taken into account as a loss from the sale or exchange of a capital asset or with respect to which a deduction for a loss was allowed under section 165,

is restored in whole or in part during any taxable year by reason of any recovery of money or other property in respect of the property to which such security was related, the value so restored (to the extent that, when added to the value so restored during prior taxable years, it does not exceed the amount of the loss described in paragraph (2)) shall, except as provided in subsection (b), be included in gross income for the taxable year in which such restoration occurs.

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SEC. 86. SOCIAL SECURITY AND TIER 1 RAILROAD RETIREMENT BENEFITS.

(a) IN GENERAL.—* * *

* * * * * * *

(f) TREATMENT AS PENSION OR ANNUITY FOR CERTAIN PURPOSES.—For purposes of—

(1) section 37(c)(3)(A) (relating to reduction for amounts recieved as pension or annuity),

[(1)] *(2)* section [43] *32* (c)(2) (defining earned income),

[(2)] *(3)* section 219(f)(1) (defining compensation),

[(3)] *(4)* section 221(b)(2) (defining earned income), and

[(4)] *(5)* section 911(b)(1) (defining foreign earned income),

any social security benefit shall be treated as an amount received as a pension or annuity.

[SEC. 87. ALCOHOL FUEL CREDIT.

[Gross income includes an amount equal to the amount of the credit allowable to the taxpayer under section 44E for the taxable year (determined without regard to subsection (e) thereof).]

SEC. 87. ALCOHOL FUEL CREDIT.

Gross income includes the amount of the alcohol fuel credit determined with respect to the taxpayer for the taxable year under section 40(a).

PART III—ITEMS SPECIFICALLY EXCLUDED FROM GROSS INCOME

Sec. 101. Certain death benefits.
Sec. 102. Gifts and inheritances.
Sec. 103. Interest on certain governmental obligations.
Sec. 104. Compensation for injuries or sickness.
Sec. 105. Amounts received under accident and health plans.
Sec. 106. Contributions by employer to accident and health plans.
Sec. 107. Rental value of parsonages.
Sec. 108. Income from discharge of indebtedness.
Sec. 109. Improvements by lessee on lessor's property.
Sec. 110. Income taxes paid by lessee corporation.
Sec. 111. Recovery of bad debts, prior taxes, and delinquency amounts.
Sec. 112. Certain combat pay of members of the Armed Forces.
Sec. 113. Mustering-out payments for members of the Armed Forces.
Sec. 114. Sports programs conducted for the American National Red Cross.
Sec. 115. Income of States, municipalities, etc.

Sec. 116. Partial exclusion of dividends and interest received by individuals.
Sec. 117. Scholarships and fellowship grants.
Sec. 118. Contributions to the capital of a corporation.
Sec. 119. Meals or lodging furnished for the convenience of the employer.
Sec. 120. Amounts received under qualified group legal service plans.
Sec. 121. One-time exclusion of gain from sale of principal residence by individual who has attained age 55.
Sec. 122. Certain reduced uniformed services retirement pay.
Sec. 123. Amounts received under insurance contracts for certain living expenses.
Sec. 124. Qualified transportation provided by employer.
Sec. 125. Cafeteria plans.
Sec. 126. Certain cost-sharing payments.
Sec. 127. Educational assistance programs.
Sec. 128. Interest on certain savings certificates [effective for tax years ending after September 30, 1981].
Sec. 128. Partial exclusion of interest [effective for tax years beginning after December 31, 1981].
Sec. 129. Dependent care assistance programs.
Sec. 130. Cross references to other Acts.
Sec. 130. Certain personal injury liability assignments.
Sec. 131. Certain foster care payments.
[Sec. 132. Cross references to other Acts.]
Sec. 132. Certain fringe benefits.
Sec. 133. Cross references to other Acts.

SEC. 101. CERTAIN DEATH BENEFITS.

(a) Proceeds of Life Insurance Contracts Payable by Reason of Death.— * * *

(b) Employees' Death Benefits.—

(1) General rule.—Gross income does not include amounts received (whether in a single sum or otherwise) by the beneficiaries or the estate of an employee, if such amounts are paid by or on behalf of an employer and are paid by reason of the death of the employee.

(2) Special rules for paragraph (1).—

(A) $5,000 Limitation.—The aggregate amounts excludable under paragraph (1) with respect to the death of any employee shall not exceed $5,000.

(B) Nonforfeitable rights.—Paragraph (1) shall not apply to amounts with respect to which the employee possessed, immediately before his death, a nonforfeitable right to receive the amounts while living. this subparagraph shall not apply to a lump sum distribution (as defined in section 402(e)(4))—

(i) by a stock bonus, pension, or profit-sharing trust described in section 401(a) which is exempt from tax under section 501(a),

(ii) under an annuity contract under a plan described in section 403(a), or

(iii) under an anuity contract purchased by an employer which is an organization referred to insection 170(b)(1)(A)(ii) or (vi) or which is a religious organization (other than a trust) and which is exempt from tax under section 501(a), but only with respect to that portion of such total distributions payable which bears the same ratio to the amount of such total distributions payable which is (without regard to this subsection) includible in gross income, as the amounts contributed by the employer for such annuity contract which are excludable from gross income under section 403(b) bear to the total amounts contributed by the employer for such annuity contract.

(C) Joint and survivor annuities.—Paragraph (1) shall not apply to amounts received by a surviving annuitant under a joint and survivor's annuity contract after the first day of the first period for which an amount was received as an annuity by the employee (or would have been received if the employee had lived).

(D) Other annuities.—In the case of any amount to which section 72 (relating to annuities, etc., applies, the amount which is excludable under paragraph (1) (as modified by the preceding subparagraphs of this paragraph) shall be determined by reference to the value of such amount as of the day on which the employee died. Any amount so excludable under paragraph (1) shall, for purposes of section 72, be treated as additional consideration paid by the employee. Paragraph (1) shall not apply in the case of an annuity under chapter 73 of title 10 of the United States Code if the member or former member of the uniformed services by reason of whose death such annuity is payable died after attaining retirement age.

(3) Treatment of self-employed individual.—For purposes of this subsection—

(A) Self-employed individual not considered employee.—Except as provided in subparagraph (B), the term "employee" does not include a self-employed individual described in section 401(c)(1).

[(B) Special rule for certain lump sum distributions.—In the case of any lump sum distribution described in the second sentence of paragraph (2)(B), the term "employee" includes a self-employed individual described in section 401(c)(1).]

(B) Special rule for certain distributions.—In the case of any amount paid or distributed—

(i) by a trust described in section 401(a) which is exempt from tax under section 501(a), or

(ii) under a plan described in section 403(a),

the term "employee" includes a self-employed individual described in section 401(c)(1).

* * * * * * *

[(e) Alimony, etc., Payments.—

[(1) In general.—This section shall not apply to so much of any payment as is includible in the gross income of the wife under section 71 (relating to alimony) or section 682 (relating to income of an estate or trust in case of divorce, etc.).

[(2) Cross reference.—

[For definition of "wife" see section 7701 (a)(17).]

(f) Proceeds of Flexible Premium Contracts *Issued Before January* 1, 1984 Payable by Reason of Death.—

(1) In general.—Any amount paid by reason of the death of the insured under a flexible premium life insurance contract

issue before January 1, 1984 shall be excluded from gross income only if—

(A) under such contract—

(i) the sum of the premiums paid under such contract does not a any time exceed the guidelines premium limitation as of such time, and

(ii) any amount payable by reason of the death of the insured (determined without regard to any qualified additional benefit) is not at any time less than the applicable percentage of the cash value of such contract at such time, or

(B) By the terms of such contract, the cash value of such contract may not at any time exceed the net single premium with respect to the amount payable by reason of the death of the insured (determined without regard to any qualified additional benefit) at such time.

* * * * * * *

SEC. 103. INTEREST ON CERTAIN GOVERNMENTAL OBLIGATIONS.

(a) GENERAL RULE.—Gross income does not include interest on—

(1) the obligations of a State, a Territory, or a possession of the United States, or any political subdivision of any of the foregoing, or of the District of Columbia; and

(2) qualified scholarship funding bonds.

(b) INDUSTRIAL DEVELOPMENT BONDS.—

(1) SUBSECTION (a)(1) or (2) not to apply.—* * *

* * * * * * *

(4) CERTAIN EXEMPT ACTIVITIES.—Paragraph (1) shall not apply to any obligation which is issued as part of an issue substantially all of the proceeds of which are to be used to provide—

(A) projects for residential rental property if at all times during the qualified project period—

(i) 15 percent or more in the case of targeted area projects, or

(ii) 20 percent or more in the case of any other project,

of the units in each project are to be occupied by individuals of low or moderate income,

(B) sports facilities,

(C) convention or trade show facilities,

(D) airports, docks, wharves, mass commuting facilities, parking facilities, or storage or training facilities directly related to any of the foregoing,

(E) sewage or solid waste disposal facilities or facilities for the local furnishing of electric energy or gas,

(F) air or water pollution control facilities,

(G) facilities for the furnishing of water for any purpose if—

(i) the water is or will be made available to members of the general public (including electric utility, industrial, agricultural, or commercial users), and

(ii) either the facilities are operated by a governmental unit or the rates for the furnishing or sale of the water have been established or approved by a State or political subdivision thereof, by an agency or instrumentality of the United States, or by a public service or public utility commission or other similar body of any State or political subdivision thereof,

(H) qualified hydroelectric generating facilities,

(I) qualified mass commuting vehicles, or

(J) local district heating or cooling facilities.

For purposes of subparagraph (E), the local furnishing of electric energy or gas from a facility shall include furnishing solely within the area consisting of a city and 1 contiguous county.

For purposes of subparagraph (A), any property shall not be treated as failing to be residential rental property merely because part of the building in which such property is located is used for purposes other than residential purposes.

* * * * * * *

(6) EXEMPTION FOR CERTAIN SMALL ISSUES.—

(A) IN GENERAL.—* * *

* * * * * * *

(F) CERTAIN CAPITAL EXPENDITURES NOT TAKEN INTO ACCOUNT.—For purposes of subparagraph (D)(ii), any capital expenditure—

(i) * * *

* * * * * * *

(iv) described in clause (i) or (ii) of section [44F] *30*(b)(2)(A) for which a deduction was allowed under section 174(a),

shall not be taken into account.

* * * * * * *

(I) AGGREGATE AMOUNT OF CAPITAL EXPENDITURES WHERE THERE IS URBAN DEVELOPMENT ACTION GRANT.—In the case of any issue substantially all of the proceeds of which are to be used to provide facilities with respect to which an urban development action grant has been made under section 119 of the Housing and Community Development Act of 1974, capital expenditures of not to exceed [$10,000,000] *$15,000,000* shall not be taken into account for purposes of applying subparagraph (D)(ii). *This subparagraph shall not apply unless the amount of the urban development action grant equals or exceeds 5 percent of the total capital expenditures on the facilities with respect to which the action grant has been made.*

* * * * * * *

(P) EXEMPTION NOT TO APPLY TO EXISTING FACILITIES.—

(i) IN GENERAL.—Subparagraph (A) shall not apply to any obligation issued as part of an issue if any portion of the proceeds of such issue is to be used for the acquisition of any property unless the first use of such property is pursuant to such issue.

(ii) EXCEPTION FOR SUBSTANTIAL REHABILITATION.—Clause (i) shall not apply to any proceeds with respect to any property if such proceeds would be treated as qualified rehabilitation expenditures under section 48(g) (determined without regard to paragraph (2)(B)(ii) thereof).

(Q) AGGREGATION OF ISSUES WITH RESPECT TO SINGLE PROJECT.—For purposes of this paragraph, 2 or more issues part or all of which are to be used with respect to a single building, an enclosed shopping mall, or a strip of offices, stores, or residences using substantial common facilities shall be treated as 1 issue (and any person who is a principal user with respect to any of such issues shall be treated as a principal user with respect to the aggregated issue).

* * * * * * *

(13) EXCEPTION.—Paragraphs (4), (5), (6), and (7) shall not apply with respect to any obligation for any period during which it is held by a person who is a substantial user of the facilities or a related person. *For purposes of this paragraph, a partnership and each of its partners shall be treated as related persons.*

* * * * * * *

(15) AGGREGATE LIMIT PER TAXPAYER FOR SMALL ISSUE EXCEPTION.—

(A) IN GENERAL.—Paragraph (6) of this subsection shall not apply to any issue if the aggregate authorized face amount of such issue allocated to any benefidiary (when increased by the outstanding tax-exempt idb's of such beneficiary) exceed $40,000,000.

(B) OUTSTANDING TAX-EXEMPT IDB's OF ANY PERSON.—For purposes of applying subparagraph (A) with respect to any issue, the outstanding tax-exempt IDB's of any person who is a beneficiary with respect to such issue is the aggregate face amount of all industrial development bonds the interest on which is exempt from tax under subsection (a)—

(i) which are allocated to such beneficiary, and

(ii) which are outstanding at the time of such later issue (not including as outstanding any obligation which is to be redeemed from the proceeds of the later issue).

(C) ALLOCATION OF AMOUNT OF ISSUE.—

(i) AMOUNT ALLOCATED TO DEVELOPER, ETC.—Except to the extent that the amount of any issue is not allocated to beneficiaries under clause (ii), no portion of such issue shall be allocated to any person who is a beneficiary by reason of owning the facilities being financed by the issue and renting such facilities to other persons.

(ii) ALLOCATION TO OTHER BENEFICIARIES.—The amount of any issue shall be allocated among beneficiaries who are not described in clause (i) as follows:

(I) If one of such beneficiaries uses more than 50 percent of the facilities, the entire amount of the issue shall be allocated to such beneficiary.

(II) In any case to which subclause (I) does not apply, the amount of such issue shall be allocated equally among beneficiaries who use at least 25 percent but not more than 50 percent of the facilities; except that no one such person shall be allocated more than 50 percent.

(D) BENEFICIARY.—For purposes of this paragraph, the term "beneficiary" means any person who is a user of the facilities being financed by the issue.

(E) TREATMENT OF RELATED PERSONS.—For purposes of this paragraph, all persons who are related (within the meaning of paragraph (6)(C)) to each other shall be treated as one person.

(16) ACQUISITION OF LAND NOT PERMITTED.—

(A) IN GENERAL.—Paragraphs (4), (5), (6), and (7) shall not apply with respect to any obligation issued as part of an issue if any portion of the proceeds of such issue are to be used (directly or indirectly) for the acquisition of land.

(B) EXCEPTION FOR FIRST-TIME FARMERS.—

(i) IN GENERAL.—If the requirements of clause (ii) are met with respect to any land, subparagraph (A) shall not apply to such land (but only to the extent of expenditures not in excess of $250,000).

(ii) ACQUISITION BY FIRST-TIME FARMER.—The requirements of this clause are met with respect to any land if—

(I) such land is to be used for farming purposes, and

(II) such land is to be acquired by an individual who is a first-time farmers, who will be the principal user of such land, and who will materially participate in the operation of the farm of which such land is a part.

(iii) FIRST-TIME FARMER.—For purposes of this subparagraph, the term "first-time farmer" means any individual who has not at any time had any direct or indirect ownership interest in any farm in the operation of which such individual materially participated.

(iv) FARM.—For purposes of this subparagraph, the term "farm" has the meaning given such term by section 6420(c)(2).

(17) NO PORTION OF BONDS MAY BE ISSUED FOR SKYBOXES, AIRPLANES, GAMBLING ESTABLISHMENTS, ETC.—Paragraphs (4), (5), (6), and (7) shall not apply to any obligation issued as part of an issue if any portion of the proceeds of such issue is to be used to provide any airplane, skybox or other private luxury box, any facility primarily used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises.

(c) ARBITRAGE BONDS.—

(1) SUBSECTION (A) (1) OR (2) NOT TO APPLY.—* * *

* * * * * * *

(6) EXTENSION OF MORTGAGE SUBSIDY BOND ARBITRAGE RULES TO PRIVATE ACTIVITY BONDS.—

(A) IN GENERAL.—Under regulations, any private activity bond shall be treated as an obligation not described in subsection (a)(1) or (2) unless the issue of which such bond is part of meets the requirements similar to those of section 103A(i).

(B) STUDENT LOAN INCENTIVE PAYMENTS NOT TAKEN INTO ACCOUNT.—For purposes of applying section 103A(i) as made applicable to private activity bonds by subparagraph (A), payments described in paragraph (5) shall not be taken into account.

[*(6)*] *(7) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection.*

* * * * * * *

[(h) CERTAIN OBLIGATIONS MUST NOT BE GUARANTEED OR SUBSIDIZED UNDER AN ENERGY PROGRAM.—

[(1) IN GENERAL.—An obligation to which this subsection applies shall be treated as an obligation not described in subsection (a) if—

[(A) the payment of principal or interest with respect to such obligation is guaranteed (in whole or in part) by the United States under a program a principal purpose of which is to encourage the production or conservation of energy, or

[(B) the payment of the principal or interest with respect to such obligation is to be made (in whole or in part) with funds provided under such a program of the United States, a State, or a political subdivision of a State.

[(2) OBLIGATIONS TO WHICH THIS SUBSECTION APPLIES.—This subsection shall apply to any obligations to which paragraph (1) of subsection (b) does not apply by reason of—

[(A) subsection (b)(4)(H) (relating to qualified hydroelectric generating facilities), or

[(B) subsection (g) (relating to qualified steam-generating or alcohol-producing facilities).]

(h) OBLIGATION MUST NOT BE GUARANTEED, ETC.—

(1) IN GENERAL.—An obligation shall not be treated as an obligation described in subsection (a) if such obligation is federally guaranteed.

(2) FEDERALLY GUARANTEED DEFINED.—For purposes of paragraph (1), an obligation is federally guaranteed if—

(A) the payment of principal or interest with respect to such obligation is guaranteed (in whole or in part) by the United States (or any agency or instrumentality thereof),

(B) such obligation is issued as part of an issue and a significant portion of the proceeds of such issue are to be—

(i) used in making loans the payment of principal or interest with respect to which are to be guaranteed (in

whole or in part) by the United States or any agency or instrumentality thereof, or

(ii) invested (directly or indirectly) in deposits or accounts in a federally insured financial institution, or

(C) the payment of principal or interest on such obligation is otherwise indirectly guaranteed (in whole or in part) by the United States or an agency or instrumentality thereof.

(3) EXCEPTIONS.—

(A) CERTAIN INSURANCE PROGRAMS.—An obligation shall not be treated as federally guaranteed by reason of—

(i) any guarantee by the Federal Housing Adminstration or the Veterans' Administration, or

(ii) any guarantee of student loans.

(B) DEBT SERVICE, ETC.—Paragraph (1) shall not apply to—

(i) proceeds of the issue invested for an initial temporary period until such proceeds are needed for the purpose for which such issue was issued,

(ii) investments related to debt service,

(iii) investments of a reserve which meet the requriements of subsection (c)(4)(B), or

(iv) other investments permitted under regulations.

(4) DEFINITIONS.—For purposes of this subsection—

(A) TREATMENT OF CERTAIN ENTITIES WITH AUTHORITY TO BORROW FROM UNITED STATES.—Any entity with statutory authority to borrow from the United States shall be treated as an instrumentality of the United States.

(B) FEDERALLY INSURED FINANCIAL INSTITUTION.—The term "federally insured financial institution" means—

(i) a bank (as defined in section 581),

(ii) a mutual savings bank, cooperative bank, domestic building and loan association, or other savings institution, or

(iii) a credit union,

the deposits or accounts in which are insured under Federal law.

(5) CERTAIN OBLIGATIONS SUBSIDIZED UNDER ENERGY PROGRAM.—

(A) IN GENERAL.—An obligation to which this paragraph applies shall be treated as an obligation not described in subsection (a) if the payment of the principal or interest with respect to such obligation is to be made (in whole or in part) under a program of the United States, a State, or a political subdivision of a State the principal purpose of which is to encourage the production or conservation of energy.

(B) OBLIGATIONS TO WHICH PARAGRAPH APPLIES.—This paragraph shall apply to any obligations to which paragraph (1) of subsection (b) does not apply by reason of—

(i) subsection (b)(4)(H) (relating to qualified hydroelectric generating facilities), or

(ii) subsection (g) (relating to qualified steam-generating or alcohol-producing facilities).

* * * * * * *

(m) Obligations Exempt Other Than Under This Title.—

(1) Prior exemptions.—For purposes of this title, notwithstanding any provisions of this section or section 103A any obligation the interest on which is exempt from taxation under this title under any provision of law which is in effect on the date of the enactment of this subsection (other than a provision of this title) shall be treated as an obligation described in subsection (a). *In the case of an obligation issued after December 31, 1983, such obligation shall not be treated in this paragraph unless the requirements of subsections (b), (c), (h), (j), (k), and (l) of this section and section 103A (whichever are appropriate) are met with respect to such obligation.*

* * * * * * *

(n) Limitation on Aggregate Amount of Private Activity Bonds Issued During Any Calendar Year.—

(1) In general.—A private activity bond issued as part of an issue shall be treated as an obligation not described in subsection (a) if the aggregate amount of private activity bonds issued pursuant to such issue, when added to the aggregate amount of private activity bonds previously issued by the issuing authority during the calendar year, exceeds such authority's private activity bond limit for such calendar year.

(2) Private activity bond limit for state agencies.—For purposes of this subsection—

(A) In general.—The private activity bond limit for any agency of the State authorized to issue private activity bonds for any calendar year shall be 50 percent of the State ceiling for such calendar year.

(B) Special rule where state has more than 1 agency.—If more than 1 agency of the State is authorized to issue private activity bonds, all such agencies shall be treated as a single agency.

(3) Private activity bond limit for other issuers.—For purposes of this subsection—

(A) In general.—The private activity bond limit for any issuing authority (other than a State agency) for any calendar year is an amount which bears the same ratio to 50 percent of the State ceiling for such calendar year as—

(i) the population of the jurisdiction of such issuing authority, bears to

(ii) the population for the entire State.

(B) Overlapping jurisdictions.—For purposes of subparagraph (A)(i), rules similar to the rules of section 103A(g)(3)(B) shall apply.

(4) State ceiling.—For purposes of this subsection—

(A) In general.—The State ceiling applicable to any State for any calendar year shall be an amount equal to $150 multiplied by the State's population.

(B) Phasein of limitation where amount of 1983 private activity bonds exceeds the ceiling.—

(i) In general.—In the case of any State which had an excess bond amount for 1983, the State ceiling for calendar year 1984 shall be the sum of the State ceiling determined under subparagraph (A) plus 50 percent of the excess bond amount for 1983.

(ii) Excess bond amount for 1983—For purposes of clause (i), the excess bond amount for 1983 in any State is the excess (if any) of—

(I) the aggregate amount of private activity bonds issued by issuing authorities in such State during the first 9 months of calendar year 1983 multiplied by 4/3, over

(II) the State ceiling determined under subparagraph (A) for calendar year 1984.

(C) Adjustment of ceiling to reflect termination of small issue exemption.—In the case of calendar years after 1986, subparagraph (A) shall be applied by substituting "$100" for "$150".

(5) Special rule for states with constitutional home rule cities.—In the case of any State with 1 or more constitutional home rule cities (as defined in section 103A(g)(5)(C)), rules similar to the rules of paragraphs (5) and (6)(C)), of section 103A(g) shall apply for purposes of this subsection.

(6) State may provide for different allocation.—

(A) In general.—Except as provided in section 103A(g)(6)(C) as made applicable by paragraph (5), a State may, by law enacted after the date of the enactment of this subsection, provide a different formula for allocating the State ceiling among the governmental units in such State having authority to issue private activity bonds.

(B) Interim authority for Governor.—

(i) In general.—Except as provided in section 103A(G)(6)(C) (as so made applicable), the Governor of any State may proclaim a different formula for allocating the State ceiling among the governmental units in such State having authority to issue private activity bonds.

(ii) Termination of authority.—The authority provided in clause (i) shall not apply after the earlier of—

(I) the first day of the first calendar year beginning after the first calendar year after 1983 during which the legislature of the State met in regular session, or

(II) the effective data of any State legislation with respect to the allocation of the State ceiling enacted after the date of the enactment of this subsection.

(7) Private activity bond.—For purposes of this subsection—

(A) In general.—Except as otherwise provided in this paragraph, the term "private activity bond" means any ob-

ligation the interest on which is exempt from tax under subsection (a) and which is—

(i) an industrial development bond, or

(ii) a student loan bond.

(B) REFUNDING ISSUES.—The term "private activity bond" shall not include any obligation which is issued to refund another obligation to the extent that the amount of such obligation does not exceed the amount of the refunded obligation. In the case of any student loan bond, the preceding sentence shall apply only if—

(i) the maturity date of the refunding obligation is not later then the maturity date of the obligation to be refunded, or

(ii) the maturity date of the refunding obligation is not later than the date 15 years after the date on which the refunded obligation was issued (or in the case of a series of refundings, the date on which the original obligation was issued).

(8) STUDENT LOAN BONDS.—For purposes of this subsection, the term "student loan bond" means an obligation which is issued as part of an issue all or a major portion of the proceeds of which are to be used directly or indirectly to finance loans to individuals for education expenses.

(9) POPULATION.—For purposes of this subsection, determinations of the population of any State (or issuing authority) shall be made with respect to any calendar year on the basis of the most recent census estimate of the resident population of such State (or issuing authority) published by the Bureau of the Census before the beginning of such calendar year.

(10) ELECTIVE 3-YEAR CARRYFORWARD OF UNUSED LIMITATION FOR SPECIFIED PROJECT.—

(A) IN GENERAL.—If—

(i) an issuing authority's private activity bond limit for any calendar year after 1983, exceeds

(ii) the aggegate amount of private activity bonds issued during such calendar year by such authority,

such authority may elect to treat all (or any portion) of such excess as a carryforward for 1 or more carryforward projects.

(B) ELECTION MUST SPECIFY PROJECT.—In any election under subparagraph (A), the issuing authority shall—

(i) specify the project for which the carryforward is elected, and

(ii) specify the portion of the excess described in subparagraph (A) which is to be a carryforward for each such project.

(C) USE OF CARRYFORWARD.—

(i) IN GENERAL.—If any issuing authority elects a carryforward under subparagraph (A) with respect to any carryforward project, any private activity bonds issued by such authority with respect to such project during the 3 calendar years following the calendar year in which the carryforward arose shall not be taken into account under paragraph (1) to the extent the amount

of such bonds do not exceed the amount of the carryforward elected for such project.

(ii) ORDER IN WHICH CARRYFORWARD USED.—Carryforwards elected with respect to any project shall be used in the order of the calendar years in which they arose.

(D) ELECTION.—Any election made under this paragraph shall be made at such time and in such manner as the Secretary shall by regulations prescribe. Any such election (and any specification contained therein), once made, shall be irrevocable.

(E) CARRYFORWARD PROJECT.—For purposes of this paragraph, the term "carryforward project" means—

(i) any project described in paragraph (4) or (5) of subsection (b), and

(ii) the purpose of issuing student loan bonds.

[(n)**]** *(o)* CROSS REFERENCES.—

For provisions relating to the taxable status of—

(1) Certain obligations issued by Indian tribal governments (or their subdivisions), see section 7871.

(2) Exempt interest dividends of regulated investment companies, see section 852(b)(5)(B).

(3) Puerto Rican bonds, see section 3 of the Act of March 2, 1917, as amended (48 U.S.C. 745).

(4) Virgin Islands insular and municipal bonds, see section 1 of the Act of October 27, 1919 (48 U.S.C. 1402).

(5) Certain obligations issued under title I of the Housing Act of 1949, see section 102(g) of title I of such Act (42 U.S.C. 1452(g)).

SEC. 103A. MORTGAGE SUBSIDY BONDS.

(a) GENERAL RULE.—* * *

* * * * * * *

(c) QUALIFIED MORTGAGE BOND; QUALIFIED MORTGAGE ISSUE; QUALIFIED VETERANS' MORTGAGE BOND.—

(1) QUALIFIED MORTGAGE BOND DEFINED.—

(A) IN GENERAL.—For purposes of this title, the term "qualified mortgage bond" means an obligation which is issued as part of a qualified mortgage issue.

(B) TERMINATION DECEMBER 31, **[**1983**]** *1988.*—Obligation issued after December 31, **[**1983**]** *1988,* may be treated as qualified mortgage bond.

* * * * * * *

(3) QUALIFIED VETERANS' MORTGAGE BOND DEFINED.—For purposes of this section, the term "qualified veterans' mortgage bond" means any obligation—

(A) which is issued as part of an issue substantially all of the proceeds of which are to be used to provide residences for veterans,

(B) the payment of the principal and interest on which is secured by the general obligation of a State, and

(C) which is part of an issue which meets the requirements of [subsection (j)(1).] [paragraphs (1) and (3) of subsection (j)]

No obligation issued after December 31, 1988, may be treated as a qualified veterans' mortgage bond.

* * * * * * *

(g) LIMITATION ON AGGREGATE AMOUNT OF QUALIFIED MORTGAGE BONDS ISSUED DURING ANY CALENDAR YEAR.—

(1) IN GENERAL.—An issue meets the requirements of this subsection only if the aggregate amount of bonds issued pursuant thereto, when added to the aggregate amount of qualified mortgage bonds previously issued by the issuing authority during the calendar year, does not exceed the applicable limit for such authority for such calendar year.

(2) APPLICABLE LIMIT FOR STATE HOUSING AGENCY.—For purposes of this subsection—

(A) IN GENERAL.—The applicable limit for any State housing finance agency for any calendar year shall be 50 percent of the State ceiling for such year.

(B) SPECIAL RULE WHERE MORE THAN 1 AGENCY.—If any State has more than 1 State housing finance agency, all such agencies shall be treated as a single agency.

(3) APPLICABLE LIMIT FOR OTHER ISSUERS.—For purposes of this subsection—

(A) IN GENERAL.—The applicable limit for any issuing authority (other than a State housing finance agency) for any calendar year is an amount which bears the same ratio to 50 percent of the State ceiling for such year as—

[(i) the average annual aggregate principal amount of mortgages executed during the immediately preceding 3 calendar years for single-family, owner-occupied residences located within the jurisdiction of such issuing authority, bears to

[(ii) an average determined in the same way for the entire State.]

(i) the population of the jurisdiction of such issuing authority, bears to

(ii) the population for the entire State.

For the purposes of the preceding sentence, the determination of population shall be made in accordance with section 103(n)(9).

* * * * * * *

[(4) STATE CEILING.—For purposes of this subsection, the State ceiling applicable to any State for any calendar year shall be the greater of—

[(A) 9 percent of the average annual aggregate principal amount of mortgages executed during the immediately preceding 3 calendar years for single-family, owner-occupied residences located within the jurisdiction of such State, or

[(B) $200,000,000.]

(4) STATE CEILING.—For purposes of this section—

(A) In general.—Except as provided in subparagraph (B), the State ceiling applicable to any State for any calendar year shall be the greater of—

(i) 9 percent of the average annual aggregate principal amount of mortgages executed during the immediately preceding 3 calendar years for single-family, owner-occupied residences located within the jursidiction of such State, or

(ii) $200,000,000.

(B) Reduction for amount of qualified veterans' mortgage bonds issued during preceding calendar year.—The State ceiling applicable to any State for any calendar year shall be reduced by the aggregate amount of qualified veterans' mortgage bonds issued in the State during the preceding calendar year.

* * * * * * *

(8) Reduction for mortgage credit certificates.—The applicable limit of any issuing authority for any calendar year shall be reduced by the sum of—

(A) the amount of qualified mortgage bonds which such authority elects not to issue under section 25(c)(2)(A)(ii) during such year, plus

(B) the amount of any reduction in such ceiling under section 25(f) applicable to such authority for such year.

* * * * * * *

(j) Other Requirements.—

(1) Mortgages must be new mortgages.—* * *

* * * * * * *

(3) Information reporting requirement.—

(A) In general.—An issue meets the requirements of this subsection only if the issuer submits to the Secretary, not later than the 15th day of the 2d calendar month after the close of the calendar quarter in which the issue is issued, a statement concerning the issue which contains—

(i) the name and address of the issuer,

(ii) the date of the issue, the amount of the lendable proceeds of the issue, and the stated interest rate, term, and face amount of each obligation which is part of the issue,

(iii) such information as the Secretary may require in order to determine whether such issue meets the requirements of this section, and

(iv) such other information as the Secretary may require.

(B) Extension of time.—The Secretary may grant an extension of time for the filing of any statement under subparagraph (A) if there is reasonable cause for the failure to file such statement in a timely fashion.

* * * * * * *

(l) Other Definitions and Special Rules.—For purposes of this section—

(1) MORTGAGE.—* * *

* * * * * * *

(11) TREATMENT OF LIMITED EQUITY COOPERATIVE HOUSING CORPORATIONS.—

(A) TREATMENT AS RESIDENTIAL RENTAL PROPERTY.—Except as provided in subparagraph (B), for purposes of this section and section 103(b), any limited equity cooperative housing shall be treated as residential rental property and not as owner-occupied housing.

(B) SUBJECT TO MORTGAGE SUBSIDY BOND CEILING.—

(i) IN GENERAL.—In the case of any issue a significant portion the proceeds of which are to be used to finance limited equity cooperative housing—

(I) subsection (a) of section 103 shall not apply to such issue unless such issue meets the requirements of subsection (g) of this section, and

(II) for purposes of subsection (g) of this section, any obligation issued as a part of such issue shall be treated as a qualified mortgage bond.

(ii) EXCEPTION WHERE FINANCING SUBJECT TO SECTION 103 CAP.—Clause (i) shall not apply to any obligation which was taken into account under section 103(n).

(C) LIMITED EQUITY COOPERATIVE HOUSING.—For purposes of this paragraph, the term "limited equity cooperative housing" means any dwelling unit which a person is entitled to occupy by reason of his ownership of stock in a qualified cooperative housing corporation.

(D) QUALIFIED COOPERATIVE HOUSING CORPORATION.—For purposes of this paragraph, the term "qualified cooperative housing corporation" means any cooperative housing corporation (as defined by section 216(b)(1)) if—

(i) the consideration paid for stock held by any stockholder entitled to occupy any house or apartment in a building owned or leased by the corporation may not exceed the sum of—

(I) the consideration paid for such stock by the first such stockholder, as adjusted by a cost-of-living adjustment determined by the Secretary,

(II) payments made by any stockholder for improvements to such house or apartment,

(III) payments attributable to any stockholder to amortize the principal of the corporation's indebtedness arising from the acquisition or development of real property, including improvements thereto, and

(IV) contributions attributable to any stockholder to a corporate reserve account to the extent that such account is restricted to the development of acquisition of real property or improvements thereto;

(ii) the value of the corporation's assets, to the extent such value exceeds the combined transfer values of the

outstanding corporate stock (reduced by any corporate liabilities), shall be used only for public benefit or charitable purposes, or directly to benefit the corporation itself, and shall not be used directly to benefit any stockholder; and

(iii) such corporation makes an election under this paragraph at such time and in such manner as the Secretary may by regulations prescribe.

(E) EFFECT OF ELECTION.—If a cooperative housing corporation makes an election under this paragraph, section 216 shall not apply with respect to such corporation (or any successor thereof).

(F) CORPORATION MUST CONTINUE TO BE LIMITED EQUITY COOPERATIVE.—Subsection (b)(4)(A) of section 103 shall not apply to any obligation issued as part of an issue a significant portion of the proceeds of which are to be used to finance limited equity cooperative housing unless the cooperative housing corporation continues to be a qualified cooperative housing corporation at all times during the qualified project period (within the meaning of section 103(b)(2)(B)).

(G) ELECTION IRREVOCABLE.—Any election under this paragraph, once made, shall be irrevocable.

* * * * * * *

SEC. 108. INCOME FROM DISCHARGE OF INDEBTEDNESS.

(a) EXCLUSION FROM GROSS INCOME.—

(1) IN GENERAL.—Gross income does not include any amount which (but for this subsection) would be includible in gross income by reason of the discharge (in whole or in part) of indebtedness of the taxpayer if—

(A) the discharge occurs in a title 11 case,

(B) the discharge occurs when the taxpayer is insolvent, or

(C) the indebtedness discharged is qualified business indebtedness.

(2) COORDINATION OF EXCLUSIONS.—

(A) TITLE 11 EXCLUSION TAKES PRECEDENCE.—Subparagraphs (B) and (C) of paragraph (1) shall not apply to a discharge which occurs in a title 11 case.

(B) INSOLVENCY EXCLUSION TAKES PRECEDENCE OVER QUALIFIED BUSINESS EXCLUSION.—Subparagraph (C) of paragraph (1) shall not apply to a discharge to the extent that the taxpayer is insolvent.

(3) INSOLVENCY EXCLUSION LIMITED TO AMOUNT OF INSOLVENCY.—In the case of a discharge to which paragraph (1)(B) applies, the amount excluded under paragraph (1)(B) shall not exceed the amount by which the taxpayer is insolvent.

(b) REDUCTION OF TAX ATTRIBUTES IN TITLE 11 CASE OR INSOLVENCY.—

(1) IN GENERAL.—The amount excluded from gross income under subparagraph (A) or (B) of subsection (a)(1) shall be applied to reduce the tax attributes of the taxpayer as provided in paragraph (2).

(2) TAX ATTRIBUTES AFFECTED, ORDER OF REDUCTION.—Except as provided in paragraph (5), the reduction referred to in paragraph (1) shall be made in the following tax attributes in the following order:

(A) NOL.—Any net operating loss for the taxable year of the discharge, and any net operating loss carryover to such taxable year.

[(B) CERTAIN CREDIT CARRYOVERS.—Any carryover to or from the taxable year of the discharge of an amount for purposes of determining the amount of a credit allowable under—

[(i) section 38 (relating to investment in certain depreciable property),

[(ii) section 40 (relating to expenses of work incentive programs),

[(iii) section 44B (relating to credit for employment of certain new employees),

[(iv) section 44E (relating to alcohol used as a fuel), or

[(v) section 44F (relating to credit for increasing research activities).

[For purposes of clause (i), there shall not be taken into account any portion of a carryover which is attributable to the employee plan credit (within the meaning of section 48(o)(3)).]

(B) RESEARCH CREDIT AND GENERAL BUSINESS CREDIT.—Any carryover to or from the taxable year of a discharge of an amount for purposes of determining the amount allowable as a credit under—

(i) section 30 (relating to credit for increasing research activities), or

(ii) section 38 (relating to general business credit).

* * * * * * *

For purposes of this subparagraph, there shall not be taken into account any portion of a carryover which is attributable to the employee stock ownership credit determined under section 41.

* * * * * * *

(d) MEANING OF TERMS; SPECIAL RULES RELATING TO SUBSECTIONS (a), (b), AND (c).—

(1) INDEBTEDNESS OF TAXPAYER.—For purposes of this section, the term "indebtedness of the taxpayer" means any indebtedness—

(A) for which the taxpayer is liable, or

(B) subject to which the taxpayer holds property.

(2) TITLE 11 CASE.—For purposes of this section, the term "title 11 case" means a case under title 11 of the United States Code (relating to bankruptcy), but only if the taxpayer is under the jurisdiction of the court in such case and the discharge of indebtedness is granted by the court or is pursuant to a plan approved by the court.

(3) INSOLVENT.—For purposes of this section, the term "insolvent" means the excess of liabilities over the fair market value

of assets. With respect to any discharge, whether or not the taxpayer is insolvent, and the amount by which the taxpayer is insolvent, shall be determined on the basis of the taxpayer's assets and liabilities immediately before the discharge.

(4) QUALIFIED BUSINESS INDEBTEDNESS.—Indebtedness of the taxpayer shall be treated as qualified business indebtedness if (and only if)—

(A) the indebtedness was incurred or assumed—

(i) by a corporation, or

(ii) by an individual in connection with property used in his trade or business, and

(B) such taxpayer makes an election under this paragraph with respect to such indebtedness.

(5) DEPRECIABLE PROPERTY.—The term "depreciable property" has the same meaning as when used in section 1017.

[(6) SUBSECTIONS *(a)*, *(b)*, *and* *(c)* TO BE APPLIED AT PARTNER LEVEL OR S CORPORATION SHAREHOLDER LEVEL.—In the case of a partnership, subsections (a), (b), and (c) shall be applied at the partner level. In the case of an S corporation, subsections (a), (b), and (c) shall be applied at the shareholder level.**]**

(6) SUBSECTIONS (a), (b), and (c) TO BE APPLIED AT PARTNER LEVEL.—In the case of a partnership, subsections (a), (b), and (c) shall be applied at the partner level.

(7) SPECIAL RULES FOR S CORPORATION.—

(A) SUBSECTIONS (a), (b), and (c) to be applied at corporate level.—In the case of an S corporation, subsections (a), (b), and (c) shall be applied at the corporate level.

(B) REDUCTION IN CARRYOVER OF DISALLOWED LOSSES AND DEDUCTIONS.—In the case of an S corporation, for purposes of subparagraph (A) of subsection (b)(2), any loss or deduction which is disallowed for the taxable year of the discharge under section 1366(d)(1) shall be treated as a net operating loss for such taxable year.

(C) COORDINATION WITH BASIS ADJUSTMENTS UNDER SECTION 1367(B)(2).—For purposes of subsection (e)(6), a shareholder's adjusted basis in indebtedness of an S corporation shall be determined without regard to any adjustments made under section 1367(b)(2).

[(7)**]** *(8)* REDUCTIONS OF TAX ATTRIBUTES IN TITLE 11 CASES OF INDIVIDUALS TO BE MADE BY ESTATE.—In any case under chapter 7 or 11 of title 11 of the United States Code to which section 1398 applies, for purposes of paragraphs (1) and (5) of subsection (b) the estate (and not the individual) shall be treated as the taxpayer. The preceding sentence shall not apply for purposes of applying section 1017 to property transferred by the estate to the individual.

[(8)**]** *(9)* TIME FOR MAKING ELECTION, ETC.—

(A) TIME.—An election under paragraph (4) of this subsection or under paragraph (5) of subsection (b) shall be made on the taxpayer's return for the taxable year in which the discharge occurs or at such other time as may be permitted in regulations prescribed by the Secretary.

(B) Revocation only with consent.—An election referred to in subparagraph (A), once made, may be revoked only with the consent of the Secretary.

(C) Manner.—An election referred to in subparagraph (A) shall be made in such manner as the Secretary may by regulations prescribe.

[(9)] *(10)* Cross reference.—

For provision that no reduction is to be made in the basis of exempt property of an individual debtor, see section 1017(c)(1).

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SEC. 117. SCHOLARSHIPS AND FELLOWSHIP GRANTS.

(a) General Rule.—* * *

* * * * * * *

(d) Qualified Tuition Reductions.—

(1) In general.—Gross income shall not include any qualified tuition reduction.

(2) Qualified tuition reduction.—For purposes of this subsection, the term "qualified tuition reduction" means the amount of any reduction in tuition provided to an employee of an organization described in section 170(b)(1)(A)(ii) for the education (below the graduate level) at such organization (or another organization described in section 170(b)(1)(A)(ii)) of—

(A) such employee, or

(B) any person treated as an employee under the rules of section 132(f).

(3) Reduction must not discriminate in favor of highly compensated, etc.—Paragraph (1) shall apply with respect to any qualified tuition reduction provided with respect to any officer, owner, or highly compensated employee only if such reduction is available on substantially the same terms to each member of a group of employees which is defined under a reasonable classification set up by the employer which does not discriminate in favor of officers, owners, or highly compensated employees.

* * * * * * *

SEC. 125. CAFETERIA PLANS.

(a) In General.—Except as provided in subsection (b), no amount shall be included in the gross income of a participant in a cafeteria plan solely because, under the plan, the participant may choose among the benefits of the plan.

(b) Exception for Highly Compensated Participants Where Plan Is Discriminatory.—

(1) In general.—In the case of a highly compensated participant, subsection (a) shall not apply to any benefit attributable to a plan year for which the plan discriminates in favor of—

(A) highly compensated individuals as to eligibility to participate, or

(B) highly compensated participants as to contributions and benefits.

(2) Year of inclusion.—For purposes of determining the taxable year of inclusion, any benefit described in paragraph (1) shall be treated as received or accrued in the participant's taxable year in which the plan year ends.

(c) Discrimination as to Benefits or Contributions.—For purposes of subparagraph (B) of subsection (b)(1), a cafeteria plan does not discriminate where *statutory* nontaxable benefits and total benefits (or employer contributions allocable to *statutory* nontaxable benefits, and employer contributions for total benefits) do not discriminate in favor of highly compensated participants.

(d) Cafeteria Plan Defined.—For purposes of this setion—

[(1) In general.—The term "cafeteria plan" means a written plan under which—

[(A) all participants are employees, and

[(B) the participants may choose among two or more benefits.

The benefits which may be chosen may be nontaxable benefits, or cash, property, or other taxable benefits.]

(1) In general.—The term "cafeteria plan" means a written plan under which—

(A) all participants are employees, and

(B) the participants may choose among 2 or more benefits consisting of cash and statutory nontaxable benefits.

(2) Deferred compensation plans excluded.—The term "cafeteria plan" does not include any plan which provides for deferred compensation. The preceding sentence shall not apply in the case of a profit-sharing or stock bonus plan which includes a qualified cash or deferred arrangement (as defined in section 401(k)(2)) to the extent of amounts which a covered employee may elect to have the employer pay as contributions to a trust under such plan on behalf of the employee.

* * * * * * *

[(f) Nontaxable Benefit Defined.—For purposes of this section, the term "nontaxable benefit" means any benefit which, with the application of subsection (a), is not includible in the gross income of the employee.]

(f) Statutory Nontaxable Benefits Defined.—For purposes of this section, the term "statutory nontaxable benefit" means any benefit which, with the application of subsection (a), is not includible in the gross income of the employee by reason of an express provision of this chapter (other than section 117, 124, 127, or 132). Such term includes any group term life insurance which is includible in gross income only because it exceeds the dollar limitation of section 79.

* * * * * * *

SEC. 129. DEPENDENT CARE ASSISTANCE PROGRAMS.

(a) In General.—Gross income of an employee does not include amounts paid or incurred by the employer for dependent care assistance provided to such employee if the assistance is furnished pursuant to a program which is described in subsection (d).

(b) Earned Income Limitation.—

(1) In general.—The amount excluded from the income of an employee under subsection (a) for any taxable year shall not exceed—

(A) in the case of an employee who is not married at the close of such taxable year, the earned income of such employee for such taxable year, or

(B) in the case of an employee who is married at the close of such taxable year, the lesser of—

(i) the earned income of such employee for such taxable year, or

(ii) the earned income of the spouse of such employee for such taxable year.

(2) Special rule for certain spouses.—For purposes of paragraph (1), the provisions of section [44A(e)(2)] *21(d)(2)* shall apply in determining the earned income of a spouse who is a student or incapable of caring for himself.

* * * * * * *

[(e) Definitions and Special Rules.—For purposes of this section—

(1) Dependent care assistance.—The term "dependent care assistance" means the payment of, or provision of, those services which if paid for by the employee would be considered employment-related expenses under section [44A(c)(2)] *21(b)(2)* (relating to exenses for household and dependent care services necessary for gainful employment).

(2) Earned income.—The term "earned income" shall have the meaning given such term in section [43] *32*(c)(2), but such term shall not include any amounts paid or incurred by an employer for dependent care assistance to an employee.

(3) Employee.—The term "employee" includes, for any year, an individual who is an employee within the meaning of section 401(c)(1) (relating to self-employed individuals).

(4) Employer.—An individual who owns the entire interest in an unincorporated trade or business shall be treated as his own employer. A partnership shall be treated as the employer of each partner who is an employee within the meaning of paragraph (3).

(5) Attribution rules.—

(A) Ownership of stock.—Ownership of stock in a corporation shall be determined in accordance with the rules provided under subsections (d) and (e) of section 1563 (without regard to section 1563(e)(3)(C)).

(B) Interest in unincorporated trade or business.—The interest of an employee in a trade or business which is not incorporated shall be determined in accordance with regulations prescribed by the Secretary, which shall be based on principles similar to the principles which apply in the case of subparagraph (A).

(6) Utilization test not applicable.—A dependent care assistance program shall not be held or considered to fail to meet any requirements of subsection (d) merely because of utilization rates for the different types of assistance made available under the program.

(7) DISALLOWANCE OF EXCLUDED AMOUNTS AS CREDIT OR DEDUCTION.—No deduction or credit shall be allowed to the employee under any other section of this chapter for any amount excluded from the gross income of the employee by reason of this section.

* * * * * * *

SEC. 132. CERTAIN FRINGE BENEFITS.

(a) EXCLUSION FROM GROSS INCOME.—Gross income shall not include any fringe benefit which qualifies as a—

(1) no-additional-cost service,

(2) qualified employee discount,

(3) working condition fringe, or

(4) de minimis fringe.

(b) NO-ADDITIONAL-COST SERVICE DEFINED.—For purposes of this section, the term "no-additional-cost service" means any service provided by an employer to an employee for use by such employee if—

(1) such service is provided to customers in the ordinary course of the line of business of the employer in which the employee is performing services, and

(2) the employer incurs no substantial additional cost (including forgone revenue) in providing such service to the employee (determined without regard to any amount paid by the employee for such service).

(c) QUALIFIED EMPLOYEE DISCOUNT DEFINED.—For purposes of this section—

(1) QUALIFIED EMPLOYEE DISCOUNT.—The term "qualified employee discount" means any employee discount with respect to qualified property or services to the extent such discount does not exceed—

(A) in the case of property, the gross profit percentage of the price at which the property is being offered by the employer to customers, or

(B) in the case of services, 20 percent of the price at which the services are being offered by the employer to customers.

(2) GROSS PROFIT PERCENTAGE.—

(A) IN GENERAL.—The term "gross profit percentage" means the percent which—

(i) the excess of the aggregate sales price of property sold by the employer to customers over the aggregate cost of such property to the employer, is of

(ii) the aggregate sales price of such property.

(B) DETERMINATION OF GROSS PROFIT PERCENTAGE.—Gross profit percentage shall be determined on the basis of—

(i) all property offered to customers in the ordinary course of the line of business of the employer in which the employee is performing services (or a reasonable classification of property selected by the employer), and

(ii) the employer's experience during a representative period.

(3) EMPLOYEE DISCOUNT DEFINED.—The term "employee discount" means the amount by which—

(A) the price at which the property or services are provided to the employee by the employer, is less than

(B) the price at which such property or services are being offered by the employer to customers.

(4) QUALIFIED PROPERTY OR SERVICES.—The term "qualified property or services" means any property (other than real property and other than personal property of a kind held for investment) or services which are offered for sale to customers in the ordinary course of the line of business of the employer in which the employee is performing services.

(d) WORKING CONDITION FRINGE DEFINED.—For purposes of this section, the term "working condition fringe" means any property or services provided to an employee of the employer to the extent that, if the employee paid for such property or services, such payment would be allowable as a deduction under section 162 or 167.

(e) DE MINIMIS FRINGE DEFINED.—For purposes of this section—

(1) IN GENERAL.—The term "de minimis fringe" means any property or service the value of which is so small as to make accounting for it unreasonable or administratively impracticable.

(2) AGGREGATION RULE.—For purposes of applying paragraph (1), all small-value property or services provided with respect to an individual during any calendar year which (but for subsection (a)(4)) would be includible in gross income shall be aggregated.

(3) TREATMENT OF CERTAIN EATING FACILITIES.—The operation by an employer of any eating facility for employees shall be treated as a de minimis fringe (and shall not be aggregated under paragraph (2)) if—

(A) such facility is located on or near the business premises of the employer, and

(B) revenue derived from such facility normally equals or exceeds the direct operating costs of such facility.

The preceding sentence shall apply with respect to any officer, owner, or highly compensated employee only if access to the facility is available on substantially the same terms to each member of a group of employees which is defined under a reasonable classification set up by the employer which does not discriminate in favor of officers, owners, or highly compensated employees.

(f) CERTAIN INDIVIDUALS TREATED AS EMPLOYEES FOR PURPOSES OF SUBSECTIONS (a)(1) AND (2).—FOR PURPOSES OF PARAGRAPHS (1) AND (2) OF SUBSECTION (a)—

(1) RETIRED AND DISABLED EMPLOYEES AND SURVIVING SPOUSE OF EMPLOYEE TREATED AS EMPLOYEE.—With respect to a line of business of an employer, the term "employee" includes—

(A) any individual who was formerly employed by such employer in such line of business and who separated from service with such employer in such line of business by reason of retirement or disability, and

(B) any widow or widower of any individual who died while employed by such employer in such line of business or while an employee within the meaning of subparagraph (A).

(2) SPOUSE AND DEPENDENT CHILDREN.—

(A) IN GENERAL.—Any use by the spouse or a dependent child of the employee shall be treated as use by the employee.

(B) DEPENDENT CHILD.—For purposes of subparagraph (A), the term "dependent child" means any child (as defined in section 151(e)(3)) of the employee—

(i) who is a dependent of the employee (or of the widow or widower described in paragraph (1)(B)), or

(ii) both of whose parents are deceased.

For purposes of the preceding sentence, any child to whom section 152(e) applies shall be treated as the dependent of both parents.

(g) SPECIAL RULES RELATING TO EMPLOYER.—For purposes of this section—

(1) CONTROLLED GROUPS, ETC.—All employees treated as employed by a single employer under subsection (b), (c), or (m) of section 414 shall be treated as employed by a single employer for purposes of this section.

(2) RECIPROCAL AGREEMENTS.—For purposes of paragraph (1) of subsection (a), any service provided by an employer to an employee of another employer shall be treated as provided by the employer of such employee if—

(A) such service is provided pursuant to a written agreement between such employers, and

(B) neither of such employers incurs any substantial additional cost (including forgone revenue) in providing such service or pursuant to such agreement.

(h) SPECIAL RULES.—

(1) EXCLUSIONS UNDER SUBSECTION (A)(1) AND (2) APPLY TO OFFICERS, ETC., ONLY IF NO DISCRIMINATION.—Paragraphs (1) and (2) of subsection (a) shall apply with respect to any fringe benefit described therein provided with respect to any officer, owner, or highly compensated employee only if such fringe benefit is available on substantially the same terms to each member of a group of employees which is defined under a reasonable classification set up by the employer which does not discriminate in favor of officers, owners, or highly compensated employees.

(2) SPECIAL RULE FOR LEASED SECTIONS OF DEPARTMENT STORES.—

(A) IN GENERAL.—For purposes of paragraph (2) of subsection (a), in the case of a leased section of a department store—

(i) such section shall be treated as part of the line of business of the person operating the department store, and

(ii) employees in the leased section shall be treated as employees of the person operating the department store.

(B) LEASED SECTION OF DEPARTMENT STORE.—For purposes of subparagraph (A), a leased section of a department store is any part of a department store where over-the-counter sales of property are made under a lease or similar arrangement where it appears to the general public that in-

dividuals making such sales are employed by the person operating the department store.

(3) AUTO SALESMEN.—

(A) IN GENERAL.—For purposes of subsection (a)(3), qualified automobile demonstration use shall be treated as a working condition fringe.

(B) QUALIFIED AUTOMOBILE DEMONSTRATION USE.—For purposes of subparagraph (A), the term "qualified automobile demonstration use" means any use of an automobile by an automobile salesman in the sales area in which the automobile dealer's sales office is located if—

(i) such use is provided primarily to facilitate the salesman's performance of services for the employer, and

(ii) there are substantial restrictions on the personal use of such automobile by such salesman.

(4) PARKING.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term "working condition fringe" includes providing parking to an employee on or near the business premises of the employer.

(B) SPECIAL RULE FOR OFFICERS, ETC.—The term "working condition fringe" shall not include providing parking on or near the business premises of the employer to an officer, owner, or highly compensated employee unless such parking is available on substantially the same terms to each member of a group of employees which is defined under a reasonable classification set up by the employer which does not discriminate in favor of officers, owners, or highly compensated employees.

(5) ON-PREMISES GYMS AND OTHER ATHLETIC FACILITIES.—

(A) IN GENERAL.—Gross income shall not include the value of any on-premises athletic facility provided by an employer to his employees.

(B) ON-PREMISES ATHLETIC FACILITY.—For purposes of this paragraph, the term "on-premises athletic facility" means any gym or other athletic facility—

(i) which is located on the premises of the employer,

(ii) which is operated by the employer, and

(iii) substantially all the use of which is by employees of the employer, their spouses, and their dependent children (within the meaning of subsection (f)).

(i) CUSTOMERS NOT TO INCLUDE EMPLOYEES.—For purposes of this section (other than subsection (c)(2)(B)), the term "customers" shall only include customers who are not employees.

(j) SECTION NOT TO APPLY TO FRINGE BENEFITS EXPRESSLY PROVIDED FOR ELSEWHERE.—This section (other than subsection (e)) shall not apply to any fringe benefits of a type the tax treatment of which is expressly provided for in any other section of this chapter.

(k) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section.

SEC. [132.] *133.* CROSS REFERENCES TO OTHER ACTS.

(a) For exemption of—

(1) Allowances and expenditures to meet losses sustained by persons serving the United States abroad, due to appreciation of foreign currencies, see section 5943 of title 5, United States Code.

(2) Amounts credited to the Maritime Administration under section 9(b)(6) of the Merchant Ship Sales Act of 1946, see section 9(c)(1) of that Act (50 U.S.C. App. 1742).

(3) Benefits under laws administered by the Veterans' Administration, see section 3101 of title 38, United States Code.

(4) Earnings of ship contractors deposited in special reserve funds, see section 607(d) of the Merchant Marine Act, 1936 (46 U.S.C. 1177).

(5) Income derived from Federal Reserve banks, including capital stock and surplus, see section 7 of the Federal Reserve Act (12 U.S.C. 531).

[(6) Railroad retirement annuities and pensions, see section 12 of the Railroad Retirement Act of 1935 (45 U.S.C. 2281).

[(7) Railroad unemployment benefits which are not includible in gross income under section 85, see section 2(e) of the Railroad Unemployment Insurance Act (45 U.S.C. 352).**]**

[(8)**]** *(6)* Special pensions of persons on Army and Navy medal of honor roll, see 38 U.S.C. 562(a)-(c).

PART IV—DETERMINATION OF MARITAL STATUS

Sec. 143. Determination of marital status.

SEC. 143. DETERMINATION OF MARITAL STATUS.

(a) GENERAL RULE.—For purposes of part V—

(1) The determination of whether an individual is married shall be made as of the close of his taxable year; except that if his spouse dies during his taxable year such determination shall be made as of the time of such death; and

(2) An individual legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married.

[(b) CERTAIN MARRIED INDIVIDUALS LIVING APART.—For purposes of part V, if—

[(1) an individual who is married (within the meaning of subsection (a)) and who files a separate return maintain as his home a household which constitutes for more than one-half of the taxable year the principal place of abode of a dependent (A) who (within the meaning of section 152) is a son, stepson, daughter, or stepdaughter of the individual, and (B) with respect to whom such individual is entitled to a deduction for the taxable year under section 151,

[(2) such individual furnishes over half of the cost of maintaining such household during the taxable year, and

[(3) during the entire taxable year such individual's spouse is not a member of such household, such individual shall not be considered as married.**]**

(b) CERTAIN MARRIED INDIVIDUALS LIVING APART.—For purposes of those provisions of this title which refer to this subsection, if—

(1) an individual who is married (within the meaning of subsection (a)) and who files a separate return maintains as his

home a household which constitutes for more than one-half of the taxable year the principal place of abode of a child (within the meaning of section 151(e)(3)) with respect to whom such individual is entitled to a deduction for the taxable year under section 151 (or would be so entitled but for paragraph (2) or (4) of section 152(e)),

(2) such individual furnishes over one-half of the cost of maintaining such household during the taxable year, and

(3) during the last 6 months of the taxable year, such individual's spouse is not a member of such household,

such individual shall not be considered as married.

PART V—DEDUCTIONS FOR PERSONAL EXEMPTIONS

Sec. 151. Allowance of deductions for personal exemptions.
Sec. 152. Dependent defined.
Sec. 153. Cross references.

SEC. 151. ALLOWANCE OF DEDUCTIONS FOR PERSONAL EXEMPTIONS.

(a) ALLOWANCE OF DEDUCTIONS.—* * *

* * * * * * *

(e) ADDITIONAL EXEMPTION FOR DEPENDENTS.—

(1) IN GENERAL.—An exemption of $1,000 for each dependent (as defined in section 152)—

(A) whose gross income for the calendar year in which the taxable year of the taxpayer begins is less than $1,000, or

(B) who is a child of the taxpayer and who (ii) has not attained the age of 19 at the close of the calendar year in which the taxable year of the taxpayer begins, or (i) is a student.

(2) EXEMPTION DENIED IN CASE OF CERTAIN MARRIED DEPENDENTS.—No exemption shall be allowed under this subsection for any dependent who has made a joint return with his spouse under section 6013 for the taxable year beginning in the calendar year in which the taxable year of the taxpayer begins.

(3) CHILD DEFINED.—For purposes of paragraph (1)(B), the term "child" means an individual who (within the meaning of section 152) is a son, stepson, daughter, or stepdaughter of the taxpayer.

(4) STUDENT DEFINED.—For purposes of paragraph (1)(B)(ii), the term "student" means an individual who during each of 5 calendar months during the calendar year in which the taxable year of the taxpayer begins—

(A) is a full-time student at an educational organization described in section 170(b)(1)(A)(ii); or

(B) is pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of an educational organization described in section 170(b)(1)(A)(ii) or of a State or political subdivision of a State.

(5) CERTAIN INCOME OF HANDICAPPED DEPENDENTS NOT TAKEN INTO ACCOUNT.—

(A) IN GENERAL.—For purposes of paragraph (1)(A), the gross income of an individual who is permanently and totally disabled shall not include income attributable to serv-

ices performed by the individual at a sheltered workshop if—

(i) the availability of medical care at such workshop is the principal reason for his presence there, and

(ii) the income arises solely from activities at such workshop which are incident to such medical care.

(B) SHELTERED WORKSHOP DEFINED.—For purposes of subparagraph (A), the term "sheltered workshop" means a school—

(i) which provides special instruction or training designed to alleviate the disability of the individual, and

(ii) which is operated by—

(I) an organization described in section 501(c)(3) and exempt from tax under section 501(a), or

(II) a State, a possession of the United States, any political subdivision of any of the foregoing, the United States, or the District of Columbia.

(C) PERMANENT AND TOTAL DISABILITY DEFINED.—An individual shall be treated as permanently and totally disabled for purposes of this paragraph if such individual would be so treated under paragraph (3) of section 37(e).

* * * * * * *

SEC. 152. DEPENDENT DEFINED.

(a) GENERAL DEFINITION.—* * *

* * * * * * *

(e) SUPPORT TEST IN CASE OF CHILD OF DIVORCED PARENTS, ET CETERA.—

[(1) GENERAL RULE.—If—

[(A) a child (as defined in section 151(e)(3) receives over half of his support during the calendar year from his parents who are divorced or legally separated under a decree of divorce or separate maintenance, or who are separated under a written separation agreement, and

[(B) such child is in the custody of one or both of his parents for more than one-half of the calendar year,

such child shall be treated, for purposes of subsection (a), as receiving over half of his support during the calendar year from the parent having custody for a greater portion of the calendar year unless he is treated, under the provisions of paragraph (2), as having received over half of his support for such year from the other parent (referred to in this subsection as the parent not having custody).

[(2) SPECIAL RULE.—The child of parents described in paragraph (1) shall be treated as having received over half of his support during the calendar year from the parent not having custody if—

[(A)(i) the decree of divorce or of separate maintenance, or a written agreement between the parents applicable to the taxable year beginning in such calendar year, provides that the parent not having custody shall be entitled to any deduction allowable under section 151 for such child, and [(ii) such parent not having custody provides at least $600 for the support of such child during the calendar year, or

[(B)(i) the parent not having custody provides $1,200 or more for the support of such child (or if there is more than one such child, $1,200 or more for each of such children) for the calendar year, and

[(ii) the parent having custody of such child does not clearly establish that he provided more for the support of such child during the calendar year than the parent not having custody.

For the purposes of this paragraph, amounts expended for the support of a child or children shall be treated as received from the parent not having custody to the extent that such parent provided amounts for such support.

[(3) ITEMIZED STATEMENT REQUIRED.—if a taxpayer claims that paragraph (2)(B) applies with respect to a child for a calendar year and the other parent claims that paragraph (2)(B)(i) is not satisfied or claims to have provided more for the support of such child during such calendar year than the taxpayer, each parent shall be entitled to receive, under regulations to be prescribed by the Secretary, an itemized statement of the expenditures upon which the other parent's claim of support is based.

[(4) EXCEPTION FOR MULTIPLE-SUPPORT AGREEMENT.—The provisions of this subsection shall not apply in any case where over half of the support of the child is treated as having been received from a taxpayer under the provisions of subsection (c).

[(5) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection.]

(e) SUPPORT TEST IN CASE OF CHILD OF DIVORCED PARENTS, ETC.—

(1) CUSTODIAL PARENT GETS EXEMPTION.—Except as otherwise provided in this subsection, if—

(A) a child (as defined in section 151(e)(3)) receives over half of this support during the calendar year from his parents—

(i) who are divorced or legally separated under a decree of divorce or separate maintenance,

(ii) who are separated under a written separation agreement, or

(iii) who live apart at all times during the last 6 months of the calendar year, and

(B) such child is in the custody of one or both of his parents for more than one-half of the calendar year,

such child shall be treated, for purposes of subsection (a), as receiving over half of his support during the calendar year from the parent having custody for a greater portion of the calendar year (hereinafter in this subsection referred to as the "custodial parent").

(2) EXCEPTION WHERE CUSTODIAL PARENT RELEASES CLAIM TO EXEMPTION FOR THE YEAR.—A child of parents described in paragraph (1) shall be treated as having received over half of

his support during a calendar year from the noncustodial parent if—

(A) the custodial parent signs a written declaration (in such manner and form as the Secretary may by regulations prescribe) that such custodial parent will not claim such child as dependent for any taxable year beginning in such calendar year, and

(B) the noncustodial parent attaches such written declaration to the noncustodial parent's return for the taxable year beginning during such calendar year.

For purposes of the preceding sentence, the term "noncustodial parent" means the parent who is not the custodial parent.

(3) EXCEPTION FOR MULTIPLE-SUPPORT AGREEMENT.—The provisions of this subsection shall not apply in any case where over half of the support of the child is treated as having been received from a taxpayer under the provisions of subsection (c).

(4) EXCEPTION FOR CERTAIN PRE-1984 INSTRUMENTS.—

(A) IN GENERAL.—A child of parents described in paragraph (1) shall be treated as having received over half his support during a calendar year from the noncustodial parent if—

(i) a qualified pre-1984 instrument between the parents applicable to the taxable year beginning in such calendar year provides that the noncustodial parent shall be entitled to any deduction allowable under section 151 for such child, and

(ii) the noncustodial parent provides at least $600 for the support of such child during such calendar year.

For purposes of this subparagraph, amounts expended for the support of a child or children shall be treated as received from the noncustodial parent to the extent that such parent provided amounts for such support.

(B) QUALIFIED PRE-1984 INSTRUMENT.—For purposes of this paragraph, the term "qualified pre-1984 instrument" means any decree of divorce or separate maintenance or written agreement—

(i) which is executed before January 1, 1984,

(ii) which on such date contains the provision described in subparagraph (A)(i), and

(iii) which is not modified on or after such date in a modification which expressly provides that this paragraph shall not apply to such decree or agreement.

(5) SPECIAL RULE FOR SUPPORT RECEIVED FROM NEW SPOUSE OF PARENT.—For purposes of this subsection, in the case of the remarriage of a parent, support of a child received from the parent's spouse shall be treated as received from the parent.

(6) CROSS REFERENCE.—

For provision treating child as dependent of both parents for purposes of medical expense deduction, see section 213(d)(5).

PART VI—ITEMIZED DEDUCTIONS FOR INDIVIDUALS AND CORPORATIONS

* * * * * * *

SEC. 162. TRADE OR BUSINESS EXPENSES.

(a) In General.—* * *

* * * * * * *

(i) Group Health Plans.—

(1) General rule.—The expenses paid or incurred by an employer for a group health plan shall not be allowed as a deduction under this section if the plan differentiates in the benefits it provides between individuals having end stage renal disease and other individuals covered by such plan on the basis of the existence of end stage renal disease, the need for renal dialysis, or in any other manner.

(2) Group health plan.—For purposes of this subsection the term "group health plan" means any plan of, or contributed to by, an employer to provide medical care (as defined in section [213((e))] *213(d)* to his employees, former employees, or the families of such employees or former employees, directly or through insurance, reimbursement, or otherwise.

SEC. 163. INTEREST.

(a) General Rule.—* * *

* * * * * * *

(e) Reduction of Deduction Where Section 25 Credit Taken.—The amount of the deduction under this section for interest paid or accrued during any taxable year on indebtedness with respect to which a mortgage credit certificate has been issued under section 25 shall be reduced by the amount of the credit allowed with respect to such interest under section 25.

SEC. 164. TAXES.

(a) General Rule.—* * *

* * * * * * *

(f) Cross References.—

[(1) For provisions disallowing any deduction for the payment of the tax imposed by subchapter B of chapter 3 (relating to tax-free covenant bonds), see section 1451.]

[(2)] *(1)* For provisions disallowing any deduction for certain taxes, see section 275.

[(3)] *(2)* For treatment of taxes imposed by Indian tribal governments (or their subdivisions), see section 7871.

* * * * * * *

SEC. 165. LOSSES.

(a) General Rule.—* * *

* * * * * * *

(H) Casualty and Theft Losses.—

(1) General Rule.—Any loss of an individual described in subsection (c)(3) shall be allowed for any taxable year only to the extent that—

(A) the amount of loss to such individual arising from each casuality, or from each theft, exceeds $100, and

(B) the aggregate amount of all such losses sustained by such individual during the taxable year (determined after application of subparagraph (A)) exceeds 10 percent of the adjusted gross income of the individual.

(2) SPECIAL RULES.—

(A) JOINT RETURNS.—For purposes of the $100 and 10 percent limitations described in paragraph (1), a husband and wife making a joint return for the taxable year shall be treated as one individual.

(B) DETERMINATION OF ADJUSTED GROSS INCOME IN CASE OF ESTATES AND TRUSTS.—For purposes of paragraph (1), the adjusted gross income of an estate or trust shall be computed in the same manner as in the case of an individual, except that the deductions for costs paid or incurred in connection with the administration of the estate or trust shall be treated as allowable in arriving at adjusted gross income.

[(B)] *(C)* COORDINATION WITH ESTATE TAX.—No loss described in subsection (c)(3) shall be allowed if, at the time of filing the return, such loss has been claimed for estate tax purposes in the estate tax return.

(D) COORDINATION WITH SECTION 1231.—

(i) For purposes of paragraph (1)(B), adjusted gross income shall be determined without regard to the application of section 1231 to any gain or loss from an involuntary conversion of property described in subsection (c)(3) arising from fire, storm, shipwreck, or other casualty or from theft.

(ii) Section 1231 shall be applied after the application of paragraph (1)

* * * * * * *

(k) TREATMENT AS DISASTER LOSS WHERE TAXPAYER ORDERED TO DEMOLISH OR RELOCATE RESIDENCE IN DISASTER AREA BECAUSE OF DISASTER.—In the case of a taxpayer whose residence is located in an area which has been determined by the President of the United States to warrant assistance by the Federal Government under the Disaster Relief Act of 1974, if—

(1) not later than the 120th day after the date of such determination, the taxpayer is ordered, by the government of the State or any political subdivision thereof in which such residence is located, to demolish or relocate such residence, and

(2) the residence has been rendered unsafe for use as a residence by reason of the disaster,

any loss attributable to such disaster shall be treated as a loss which arises from a casualty and which is described in subsection (i).

[(k)] *(l)* CROSS REFERENCES.—

(1) For special rule for banks with respect to worthless securities, see section 582.

(2) For disallowance of deduction for worthlessness of securities to which subsection (g)(2)(C) applies, if issued by a political party or similar organization, see section 271.

(3) For special rule for losses on stock in a small business investment company, see section 1242.

(4) For special rule for losses of a small business investment company, see section 1243.

(5) For special rule for losses on small business stock, see section 1244.

* * * * * * *

SEC. 168. ACCELERATED COST RECOVERY SYSTEM.

(a) ALLOWANCE OF DEDUCTION.—* * *

* * * * * * *

(f) SPECIAL RULES FOR APPLICATION OF THIS SECTION.—FOR PURPOSES OF THIS SECTION—

(1) COMPONENTS OF SECTION 1250 CLASS PROPERTY.—* * *

* * * * * * *

(12) LIMITATIONS ON PROPERTY FINANCED WITH TAX-EXEMPT BONDS.—

(A) IN GENERAL.—* * *

* * * * * * *

[(C) EXCEPTIONS.—Subparagraph (A) shall not apply to any recovery property which is placed in service—

[(i) in connection with projects for residential rental property financed by the proceeds of obligations described in section 103(b)(4)(A),

[(ii) in connection with a sewage or solid waste disposal facility—

[(I) which provides sewage or solid waste disposal services for the residents of part or all of 1 or more governmental units, and

[(II) with respect to which substantially all of the sewage or solid waste processed is collected from the general public,

[(iii) as an air or water pollution control facility which is—

[(I) installed in connection with an existing facility, or

[(II) installed in connection with the conversion of an existing facility which uses oil or natural gas (or any product of oil or natural gas) as a primary fuel to a facility which uses coal as a primary fuel, or

[(iv) in connection with a facility with respect to which an urban development action grant has been made under section 119 of the Housing and Community Development Act of 1974.**]**

(C) EXCEPTION FOR PROJECTS FOR RESIDENTIAL RENTAL PROPERTY.—Subparagraph (A) shall not apply to any recovery property which is placed in service in connection with

projects for residential rental property financed by the proceeds of obligations described in section 103(b)(4)(A).

[(D) EXISTING FACILITY.—For purposes of this paragraph, the term "existing facility" means a plant or property in operation before July 1, 1982.]

[(E)]*(D)* EXCEPTION WHERE LONGER RECOVERY PERIOD APPLICABLE.—Subparagraph (A) shall not apply to any recovery property if the recovery period which would be applicable to such property by reason of an election under subsection (b)(3) exceeds the recovery period for such property determined under subparagraph (B).

* * * * * * *

(g) DEFINITIONS.—For purposes of this section—

(1) PUBLIC UTILITY PROPERTY.—The term "public utility property" means property described in section 167(l)(3)(A).

(2) PRESENT CLASS LIFE.—The term "present class life" means the class life (if any) which would be applicable with respect to any property as of January 1, 1981, under subsection (m) of section 167 (determined without regard to paragraph (4) thereof and as if the taxpayer had made an election under such subsection). *If any property (other than section 1250 class property) does not have a present class life within the meaning of the preceding sentence, the Secretary may prescribe a present class life for such property which reasonably reflects the anticipated useful life of such property to the industry or other group.*

* * * * * * *

(i) LIMITATIONS RELATING TO LEASES OF QUALIFIED LEASED PROPERTY.—For purposes of this subtitle, in the case of safe harbor lease property, the following limitations shall apply:

(1) LESSOR MAY NOT REDUCE TAX LIABILITY BY MORE THAN 50 PERCENT.—

(A) IN GENERAL.—The aggregate amount allowable as deductions or credits for any taxable year which are allocable to all safe harbor lease property with respect to which the taxpayer is the lessor may not reduce the liability for tax of the taxpayer for such taxable year (determined without regard to safe harbor lease items) by more than 50 percent of such liability.

(B) CARRYOVER OF AMOUNTS NOT ALLOWABLE AS DEDUCTIONS OR CREDITS.—Any amount not allowable as a deduction or credit under subparagraph (A)—

(i) may be carried over to any subsequent taxable year, and

(ii) shall be treated as a deduction or credit allocable to safe harbor lease property in such subsequent taxable year.

(C) ALLOCATION AMONG DEDUCTIONS AND CREDITS.—The Secretary shall prescribe regulations for determining the amount—

(i) of any deduction or credit allocable to safe harbor lease property for any taxable year to which subparagraph (A) applies, and

(ii) of any carryover of any such deduction or credit under subparagraph (B) to any subsequent taxable year.

[Sec. 168(i)(1)(D)(i) and (iii), as added by section 208(a) of the Tax Equity and Fiscal Responsibility Act of 1982]

(D) LIABILITY FOR TAX AND SAFE HARBOR LEASE ITEMS DEFINED.—For purposes of this paragraph—

(i) LIABILITY FOR TAX DEFINED.—Except as provided in this subparagraph, the term "liability for tax" means the tax imposed by this chapter, reduced by the sum of the credits allowable under [subpart A of part IV] *subparts A, B, and D of part IV* of subchapter A of this chapter.

(ii) SAFE HARBOR LEASE ITEMS DEFINED.—The term "safe harbor lease items" means any of the following items which are properly allocable to safe harbor lease property with respect to which the taxpayer is the lessor:

(I) Any deduction or credit allowable under this chapter (other than any deduction for interest).

(II) Any rental income received by the taxpayer from any lessee of such property.

(III) Any interest allowable as a deduction under this chapter on indebtedness of the taxpayer (or any related person within the meaning of subsection (e)(4)(D)) which is paid or incurred to the lessee of such property (or any person so related to the lessee).

(iii) CERTAIN TAXES NOT INCLUDED.—The term "tax imposed by this chapter" shall not include any tax treated as not imposed by this chapter [under the last sentence of section 53(a)] *under section 25(b)(2) (other than the tax imposed by section 56).*

(2) METHOD OF COST RECOVERY.—The deduction allowable under subsection (a) with respect to any safe harbor lease property shall be determined by using the 150 percent declining balance method, switching to the straight-line method at a time to maximize the deduction (with a half-year convention in the first recovery year and without regard to salvage value) and a recovery period determined in accordance with the following table:

In the case of:	*The recovery period is:*
3-year property	5 years.
5-year property	8 years.
10-year property	15 years.

(3) INVESTMENT CREDIT ALLOWED ONLY OVER 5-YEAR PERIOD.—In the case of any credit which would otherwise be allowable under section 38 with respect to any safe harbor lease property for any taxable year (determined without regard to this paragraph), only 20 percent of the amount of such credit shall be allowable in such taxable year and 20 percent of such amount shall be allowable in each of the succeeding 4 taxable years.

[Sec. 168(i)(4)(A) as added by section 208(a) of the Tax Equity and Fiscal Responsibility Act of 1982]

(4) NO CARRYBACKS OF CREDIT OR NET OPERATING LOSS ALLOCABLE TO ELECTED QUALIFIED LEASED PROPERTY.—

(A) CREDIT CARRYBACKS.—In determining the amount of any credit allowable under [subpart A of part IV of subchapter A of this chapter] *section 38* which may be carried back to any preceding taxable year—

(i) the liability for tax for the taxable year from which any such credit is to be carried shall be reduced first by any credit not properly allocable to safe harbor lease property, and

(ii) no credit which is properly allocable to safe harbor lease property shall be taken into account in determining the amount of any credit which may be carried back.

(B) NET OPERATING LOSS CARRYBACKS.—The net operating loss carryback provided in section 172(b) for any taxable year shall be reduced by that portion of the amount of such carryback which is properly allocable to the items described in paragraph (1)(D)(ii) with respect to all safe harbor lease property with respect to which the taxpayer is the lessor.

(i) LIMITATIONS RELATING TO LEASES OF FINANCE LEASE PROPERTY.—For purposes of this subtitle, in the case of finance lease property, the following limitations shall apply:

(1) LESSOR MAY NOT REDUCE TAX LIABILITY BY MORE THAN 50 PERCENT.—

(A) IN GENERAL.—The aggregate amount allowable as deductions or credits for any taxable year which are allocable to all finance lease property with respect to which the taxpayer is the lessor may not reduce the liability for tax of the taxpayer for such taxable year (determined without regard to finance lease items) by more than 50 percent of such liability.

(B) CARRYOVER OF AMOUNTS NOT ALLOWABLE AS DEDUCTIONS OR CREDITS.—Any amount not allowable as a deduction or credit under subparagraph (A)—

(i) may be carried over to any subsequent taxable year, and

(ii) shall be treated as a deduction or credit allocable to finance lease property in such subsequent taxable year.

(C) ALLOCATION AMONG DEDUCTIONS AND CREDITS.—The Secretary shall prescribe regulations for determining the amount—

(i) of any deduction or credit allocable to finance lease property for any taxable year to which subparagraph (A) applies, and

(ii) of any carryover of any such deduction or credit under subparagraph (B) to any subsequent taxable year.

[Sec. 168(i)(1)(D)(i) and (iii) as added by section 209(b) of the Tax Equity and Fiscal Responsibility act of 1982]

(D) LIABILITY FOR TAX AND FINANCE LEASE ITEMS DEFINED.—For purposes of this paragraph—

(i) LIABILITY FOR TAX DEFINED.—Except as provided in this subparagraph, the term "liability for tax" means the tax imposed by this chapter, reduced by the sum of the credits allowable under [subpart A of part IV] *subparts A, B, and D of part IV* of subchapter A of this chapter.

(ii) FINANCE LEASE ITEMS DEFINED.—The term "finance lease items" means any of the following items which are properly allocable to finance lease property with respect to which the taxpayer is the lessor:

(I) Any deduction or credit allowable under this chapter.

(II) Any rental income received by the taxpayer from any lessee of such property.

(iii) CERTAIN TAXES NOT INCLUDED.—The term "tax imposed by this chapter" shall not include any tax treated as not imposed by this chapter [under the last sentence of section 53(a)] *under section 25(b)(2)* (other than the tax imposed by section 56).

(E) CERTAIN SAFE HARBOR LEASE PROPERTY TAKEN INTO ACCOUNT.—Under regulations prescribed by the Secretary, deductions and credits and safe harbor lease items which are allocable to safe harbor lease property to which this paragraph (as in effect for taxable years beginning in 1983) applies shall be taken into account for purposes of applying this paragraph.

(2) INVESTMENT CREDIT ALLOWED ONLY OVER 5-YEAR PERIOD.—In the case of any credit which would otherwise be allowable under section 38 with respect to any finance lease property for any taxable year (determined without regard to this paragraph), only 20 percent of the amount of such credit shall be allowable in such taxable year and 20 percent of such amount shall be allowable in each of the succeeding 4 taxable years.

(3) COMPUTATION OF TAXABLE INCOME OF LESSEE FOR PURPOSES OF PERCENTAGE DEPLETION.—

(A) IN GENERAL.—For purposes of section 613 or 613A, the taxable income of any taxpayer who is a lessee of any financed recovery property shall be computed as if the taxpayer was the owner of such property, except that the amount of the deduction under subsection (a) of this section shall be determined after application of paragraph (2) of this subsection.

(B) COORDINATION WITH CRUDE OIL WINDFALL PROFIT TAX.—Section 4988(b)(3)(A) shall be applied without regard to subparagraph (A).

(4) LIMITATIONS.—

(A) TERMINATION OF CERTAIN PROVISIONS.—

(i) PARAGRAPH (1).—Paragraph (1) shall not apply to property placed in service after September 30, 1985, in taxable years beginning after such date.

(ii) PARAGRAPH (2).—Paragraph (2) shall not apply to property placed in service after September 30, 1985.

(b) CERTAIN FARM PROPERTY.—This subsection shall not apply to property which is used for farming purposes (within the meaning of section 2032A(e)(5)) and which is placed in service during the taxable year but only if the cost basis of such property, when added to the cost basis of other finance lease property used for such purpose, does not exceed $150,000 (determined under rules similar to the rules of section 209(d)(1)(B) of the Tax Equity and Fiscal Responsibility Act of 1982).

(j) PROPERTY USED BY GOVERNMENTS AND OTHER TAX-EXEMPT ENTITIES.—

(1) IN GENERAL.—Notwithstanding any other provision of this section, the deduction allowed under subsection (a) (and any other deduction allowable for depreciation or amortization) for any taxable year with respect to tax-exempt use property shall be determined—

(A) by using the straight-line method (without regard to salvage value), and

(B) by using a recovery period determined under the following table:

In the case of:	*The recovery period shall be:*
(I) Property not described in subclause (II) or subclause (III).	*The present class life*
(II) Personal property with no present class life.	*12 years*
(III) 15-year real property	*40 years*

(2) OPERATING RULES.—

(A) RECOVERY PERIOD MUST AT LEAST EQUAL LEASE TERM.—In the case of any tax-exempt use property used by the tax-exempt entity pursuant to a lease, the recovery period used for purposes of paragraph (1) shall not be less than—

(i) except as provided in clause (ii), the lease term, or

(ii) in the case of 15-year real property, 125 percent of the lease term.

(B) CONVENTIONS.—

(i) PROPERTY OTHER THAN 15-YEAR REAL PROPERTY.—In the case of property other than 15-year real property, the half-year convention shall apply for purposes of paragraph (1).

(ii) 15-YEAR REAL PROPERTY.—In the case of 15-year real property, the amount determined under paragraph (1) shall be determined on the basis of the number of months in the year in which the property is in service.

(C) EXCEPTION WHERE LONGER RECOVERY PERIOD APPLIES.—Paragraph (1) shall not apply to any recovery property if the recovery period which would apply to such property by reason of an election under subsection (b)(3) exceeds

the recovery period for such property determined under this subsection.

(D) DETERMINATION OF CLASS FOR PROPERTY WHICH IS NOT RECOVERY PROPERTY.—In the case of any property which is not recovery property, for purposes of this subsection, the determination of whether such property is 15-year real property shall be made as if such property were recovery property.

(E) COORDINATION WITH SUBSECTION (f)(12).—PARAGRAPH (12) OF SUBSECTION (F) SHALL NOT APPLY TO ANY PROPERTY TO WHICH THIS SUBSECTION APPLIES.

(3) TAX-EXEMPT USE PROPERTY.—For purposes of this subsection—

(A) PROPERTY OTHER THAN 15-YEAR REAL PROPERTY.—Except as otherwise provided in this subsection, the term "tax-exempt use property" means any property used by a tax-exempt entity.

(B) 15-YEAR REAL PROPERTY.—

(i) IN GENERAL.—In the case of 15-year real property, the term "tax-exempt use property" means that portion of the property used by a tax-exempt entity in a disqualified use.

(ii) DISQUALIFIED USE.—For purposes of this subparagraph, the term "disqualified use" means any use of property by a tax-exempt entity, but only if—

(I) part or all of the property was financed (directly or indirectly) by an obligation the interest on which is exempt from tax under section 103 and such entity (or a related entity) participated in such financing.

(II) such use is pursuant to a lease under which there is a fixed or determinable price purchase or sale option which involves such entity (or a related entity) or there is the equivalent of such an option,

(III) such use is pursuant to a lease which has a lease term in excess of 80 percent of the property's useful life, or

(IV) such use occurs after a sale (or other transfer) or lease of the property by such entity (or a related entity).

(iii) 20-PERCENT THRESHOLD TEST.—Clause (i) shall apply to any property only if the portion of such property used by tax-exempt entities in disqualified uses is more than 20 percent of the property.

(iv) TREATMENT OF IMPROVEMENTS.—For purposes of this subparagraph, improvements to a property (other than land) shall not be treated as a separate property.

(C) EXCEPTION FOR SHORT-TERM LEASES.—

(i) IN GENERAL.—Property shall not be treated as used by a tax-exempt entity merely by reason of use pursuant to a short-term lease.

(ii) PROPERTY OTHER THAN 15-YEAR PROPERTY.—For purposes of this subparagraph, except as provided in clause (iii), the term "short-term lease" means any lease which has a lease term less than the greater of—

(I) 1 year, or

(II) 30 percent of the property's present class life (to the extent such present class life does not exceed 10 years).

(iii) 15-YEAR REAL PROPERTY.—For purposes of this subparagraph, in the case of 15-year real property, the term "short-term lease" means any lease which has a lease term of less than 3 years.

(D) EXCEPTION WHERE PROPERTY USED IN UNRELATED TRADE OR BUSINESS.—The term "tax-exempt use property" shall not include any portion of a property predominantly used by the tax-exempt entity in an unrelated trade or business the income of which is subject to tax under section 511.

(4) TAX-EXEMPT ENTITY.—

(A) IN GENERAL.—For purposes of this subsection, the term "tax-exempt entity" means—

(i) the United States, any State or political subdivision thereof, any possession of the United States, or any agency or instrumentality of any of the foregoing,

(ii) an organization (other than a cooperative described in section 521) which is exempt from tax imposed by this chapter, and

(iii) any foreign person or entity.

(B) EXCEPTION FOR CERTAIN PROPERTY USED BY FOREIGN PERSON OR ENTITY.—

(i) INCOME FROM PROPERTY SUBJECT TO UNITED STATES TAX.—Clause (iii) of subparagraph (A) shall not apply with respect to any property if more than 50 percent of the gross income for the taxable year derived by the foreign person or entity from the use of such property is subject to tax under this chapter. For purposes of the preceding sentence, any exclusion or exemption shall not apply for purposes of determining the amount of the gross income so derived, but shall apply for purposes of determining the portion of such gross income subject to tax under this chapter.

(ii) MOVIES.—Clause (iii) of subparagraph (A) shall not apply with respect to any qualified film (as defined in section 48(k)(1)(B)).

(iii) EXCEPTION FOR CERTAIN LEASES.—Clause (iii) of subparagraph (A) shall not apply with respect to any property if—

(I) such property is issued by a foreign person or entity pursuant to a lease from a United States person (hereinafter in this clause referred to as the "original lessor"),

(II) such foreign person or entity subleases such property to a domestic corporation (hereinafter in this clause referred to as the "sublessee"),

(III) the amount of rental payable to such foreign person or entity by the sublessee does not exceed 101 percent of the amount of the rental pay-

able by such foreign person or entity to the original lessor, and

(IV) such foreign person or entity and the lessee are members of the same affiliated group (as defined in section 1504(a) without regard to section 1504(b)).

(C) FOREIGN PERSON OR ENTITY.—For purposes of this paragraph, the term "foreign person or entity" means—

(i) any foreign government, any international organization, or any agency or instrumentality of any of the foregoing, and

(ii) any person who is not a United States person.

(D) TREATMENT OF CERTAIN TAXABLE INSTRUMENTALITIES.—For purposes of this subsection and paragraph (5) of section 48(a), a corporation shall not be treated as an instrumentality of the United States or of any State or political subdivision thereof if—

(i) all of the activities of such corporation are subject to tax under this chapter, and

(ii) such corporation does not operate as an instrumentality of such governmental unit (determined without regard to the mere designation of such corporation as an instrumentality).

(E) CERTAIN PREVIOUSLY TAX-EXEMPT ORGANIZATIONS.—For purposes of this subsection and paragraph (4) of section 48(a), an organization shall be treated as an organization described in subparagraph (A)(ii) with respect to any property of which such organization is the lessee if such organization (or a predecessor organization which was engaged in substantially similar activities) was an organization (other than a cooperative described in section 521) exempt from tax imposed by this chapter at any time during the 5-year period ending on the date such organization first used such property.

(5) SPECIAL RULES FOR CERTAIN HIGH TECHNOLOGY EQUIPMENT.—

(A) EXEMPTION WHERE LEASE TERM IS 5 YEARS OR LESS.—For purposes of this subsection, the term "tax-exempt use property" shall not include any qualified technological equipment if the use of the tax-exempt entity is pursuant to a lease which has a lease term of 5 years of less.

(B) RECOVERY PERIOD WHERE LEASE TERM IS GREATER THAN 5 YEARS.—In the case of any qualified technological equipment not described in subparagraph (A), the recovery period used for purposes of paragraph (1) shall be 5 years (or, in the case of property to which subsection (f)(2) applies, the recovery property determined for purposes of such subsection).

(C) QUALIFIED TECHNOLOGICAL EQUIPMENT.—For purposes of this paragraph—

(i) IN GENERAL.—Except as provided in clause (ii), the term "qualified technological equipment" means—

(I) any computer or peripheral equipment,

(II) any high technology telephone station equipment installed on customer's premises, and

(III) any high technology medical equipment.

(ii) EXCEPTION FOR CERTAIN PROPERTY.—The term "qualified technological equipment" shall not include any property used by a tax-exempt entity if—

(I) part or all of the property was financed (directly or indirectly) by an obligation the interest on which is exempt from tax under section 103,

(II) such use occurs after a sale (or other transfer) or lease of such property by such entity (or a related entity) and such property has been used by such entity (or a related entity) before such sale (or other transfer) or lease, or

(III) such tax-exempt entity is the United States or any agency or instrumentality of the United States.

(D) COMPUTER OR PERIPHERAL EQUIPMENT DEFINED.—For purposes of this paragraph—

(i) IN GENERAL.—The term "computer or peripheral equipment" means—

(I) any computer, and

(II) any related peripheral equipment.

(ii) COMPUTER.—The term "computer" means a programmable electronically activated device which—

(I) is capable of accepting information, applying prescribed processes to the information, and supplying the results of these processes with or without human intervention, and

(II) consists of a central processing unit containing extensive storage, logic, arithmetic, and control capabilities.

(iii) RELATED PERIPHERAL EQUIPMENT.—The term "related peripheral equipment" means any auxiliary machine (whether on-line or off-line) which is designed to be placed under the control of the central processing unit of a computer.

(iv) EXCEPTIONS.—The term "computer or related peripheral equipment" shall not include—

(I) any equipment which is an integral part of other property which is not a computer,

(II) typewriters, calculators, adding and accounting machines, copiers, duplicating equipment, and similar equipment, and

(III) equipment of a kind used primarily for amusement or entertainment of the user.

(E) HIGH TECHNOLOGY MEDICAL EQUIPMENT.—For purposes of this paragraph, the term "high technology medical equipment" means any electronic, electromechanical, or computer-based high technology equipment used in the screening, monitoring, observation, diagnosis, or treatment of patients in a laboratory, medical, or hospital environment.

(6) OTHER SPECIAL RULES.—

(A) Lease term.—In determining a lease term for purposes of this subsection—

(i) there shall be taken into account options to renew, and

(ii) 2 or more successive leases with respect to the same or substantially similar property shall be treated as 1 lease.

(B) Treatment of certain contracts for providing services, etc.—

(i) In general.—For purposes of this subsection and paragraphs (4) and (5) of section 48(a), a contract which purports to be a service contract shall not be treated as a service contract if such contract is more properly treated as a lease of property, taking into account all relevant factors including whether or not—

(I) the tax-exempt entity is in physical possession of the property,

(II) such entity controls the property,

(III) such entity has a significant economic or possessory interest in the property,

(IV) the service provider does not bear any risk of substantially diminished receipts or substantially increased expenditures if there is nonperformance under the contract,

(V) the service provider does not use the property concurrently to provide significant services to entities unrelated to the tax-exempt entity, and

(VI) the total contract price does not substantially exceed the rental value of the property for the contract period.

(ii) Other arrangements.—For purposes of this subsection and paragraphs (4) and (5) of section 48(a), an arrangement (including a partnership or other passthru entity) which is not a service contract and purports not to be a lease shall be treated as a lease if such arrangement is more properly treated as a lease, taking into account all relevant factors including factors similar to those set forth in clause (i).

(C) Exception for certain solid waste disposal facilities.—For purposes of this subsection—

(i) In general.—The term "tax-exempt use property" shall not include any qualified solid waste disposal facility.

(ii) Qualified solid waste disposal facility.—For purposes of clause (i), the term "qualified solid waste disposal facility" means any facility if—

(I) such facility provides solid waste disposal services for residents of part or all of 1 or more governmental units and substantially all of the solid waste processed at such facility is collected from the general public,

(II) such facility produces marketable quantities of steam, hot water, or electricity,

(III) the tax-exempt entity does not control the facility and is not in physical possession of the facility, and

(IV) the service provider bears any risk of substantially diminished receipts or increased expenditures if there is nonperformance under the contract.

(7) Related entities.—For purposes of this subsection—

(A)(i) Each governmental unit and each agency or instrumentality of a governmental unit is related to each other such unit, agency, or instrumentality which directly or indirectly derives its powers, rights, and duties in whole or in part from the same soverign authority.

(ii) For purposes of clause (i), the United States, each State, and each possession of the United States shall be treated as a separate sovereign authority.

(B) Any entity not described in subparagraph (A)(i) is related to any entity if the 2 entities have—

(i) significant common purposes and substantial common membership, or

(ii) directly or indirectly substantial common direction or control.

(C)(i) An entity is related to another entity—if either entity owns (directly or through 1 or more entities) a 50 percent or greater interest in the capital or profits of the other entity.

(ii) For purposes of clause (i), entities treated as related under subparagraph (A) or (B) shall be treated as 1 entity.

(D) An entity is related to another entity with respect to a transaction if such transaction is part of an attempt by such entities to avoid the application of this subsection, paragraph (4) or (5) of section 48(a), or clause (vi) of section 48(g)(2)(B).

(8) Treatment of partnerships, etc.—

(A) In general.—If any property which (but for this subparagraph) is not tax-exempt use property is held by a partnership which has a tax-exempt entity as a partner, such tax-exempt entity shall be allocated its proportionate share of all income, gain, loss, deductions, and credit attributable to such property.

(B) Determination of proportionate share.—For purposes of subparagraph (A), a tax-exempt entity's proportionate share of any item shall be determined on the basis of such entity's share of the partnership's capital or profits (whichever results in the larger proportionate share).

(C) Other pass-thru entities.—Rules similar to the rules of subparagraphs (A) and (B) shall also apply in the case of any trust or other pass-thru entity.

(9) Regulations.—the Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection.

[(j)**]** *(k)* Cross Reference.—

For special rules with respect to certain gain derived from disposition of recovery property, see sections 1245 and 1250.

* * * * * * *

SEC. 170. CHARITABLE, ETC., CONTRIBUTIONS AND GIFTS.

(a) ALLOWANCE OF DEDUCTION.—

(1) GENERAL RULE.—There shall be allowed as a deduction any charitable contribution (as defined in subsection (c)) payment of which is made within the taxable year. A charitable contribution shall be allowable as a deduction only if verified under regulations prescribed by the Secretary.

(2) CORPORATIONS ON ACCRUAL BASIS.—In the case of a corporation reporting its taxable income on the accrual basis, if—

(A) the board of directors authorizes a charitable contribution during any taxable year, and

(B) payment of such contribution is made after the close of such taxable year and on or before the 15th day of the third month following the close of such taxable year,

then the taxpayer may elect to treat such contribution as paid during such taxable year. The election may be made only at the time of the filing of the return for such taxable year, and shall be signified in such manner as the Secretary shall by regulations prescribe.

(3) FUTURE INTERESTS IN TANGIBLE PERSONAL PROPERTY.—For purposes of this section, payment of a charitable contribution which consists of a future interest in tangible personal property shall be treated as made only when all intervening interests in, and rights to the actual possession or enjoyment of, the property have expired or are held by persons other than the taxpayer or those standing in a relationship to the taxpayer described in section 267(b) *or 707(b)*. For purposes of the preceding sentence, a fixture which is intended to be served from the real property shall be treated as tangible personal property.

(b) PERCENTAGE LIMITATIONS.—

(1) INDIVIDUALS.—In the case of an individual, the deduction provided in subsection (a) shall be limited as provided in the succeeding subparagraphs.

(A) GENERAL RULE.—Any charitable contribution to—

(i) a church or a convention or association of churches,

(ii) an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its education activities are regularly carried on,

(iii) an organization the principal purpose or functions of which are the providing of medical or hospital care or medical education or medical research, if the organization is a hospital, or if the organization is a medical research organization directly engaged in the continuous active conduct of medical research in conjunction with a hospital, and during the calendar year in which the contribution is made such organization is committed to spend such contributions for such research before January 1 of the fifth calendar year which begins after the date such contribution is made,

(iv) an organization which normally received a substantial part of its support (exclusive of income received in the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501(a)) from the United States or any State or political subdivision thereof or from direct or indirect contributions from the general public, and which is organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to or for the benefit of a college or university which is an organization referred to in clause (ii) of this subparagraph and which is an agency or instrumentality of a State or political subdivision thereof, or which is owned or operated by a State or political subdivision thereof or by an agency or instrumentality of one or more States or political subdivisions,

(v) a governmental unit referred to in subsection (c)(1),

(vi) an organization referred to in subsection (c)(2) which normally receives a substantial part of its support (exclusive of income received in the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501(a)) from a governmental unit referred to in subsection (c)(1) or from direct or indirect contributions from the general public,

(vii) a private foundation described in subparagraph **[**(D)**]** *(E)*, or

(viii) an organization described in section 509(a)(2) or (3),

shall be allowed to the extent that the aggregate of such contributions does not exceed 50 percent of the taxpayer's contribution base for the taxable year.

(B) OTHER CONTRIBUTIONS.—Any charitable contribution other than a charitable contribution to which subparagraph (A) applies shall be allowed to the extent that the aggregate of such contributions does not exceed the lesser of—

(i) **[**20**]** *30* percent of the taxpayer's contribution base for the taxable year, or

(ii) the excess of 50 percent of the taxpayer's contribution base for the taxable year over the amount of charitable contributions allowable under subparagraph (A) (determined without regard to subparagraph (C)).

If the aggregate of such contributions exceeds the limitation of the preceding sentence, such excess shall be treated (in a manner consistent with the rules of subsection (d)(1)) as a charitable contribution (to which subparagraph (A) *does not apply) in each of the 5 succeeding taxable years in order of time.*

[(C) SPECIAL LIMITATION WITH RESPECT TO CONTRIBUTIONS OF CERTAIN CAPITAL GAIN PROPERTY.—

[(i) In the case of charitable contributions of capital gain property to which subsection (e)(1)(B) does not apply, the total amount of contributions of such property which may be taken into account under subsection (a) for any taxable year shall not exceed 30 percent of the taxpayer's contribution base for such year. For purposes of this subsection, contributions of capital gain property to which this paragraph applies shall be taken into account after all other charitable contributions.]

(C) SPECIAL LIMITATION WITH RESPECT TO CONTRIBUTIONS DESCRIBED IN SUBPARAGRAPH (A) OF CERTAIN CAPITAL GAIN PROPERTY.—

(i) In the case of charitable contributions described in subparagraph (A) of capital gain property to which subsection (e)(1)(B) does not apply, the total amount of contributions of such property which may be taken into account under subsection (a) for any taxable year shall not exceed 30 percent of the taxpayer's contribution base for such year. For purposes of this subsection, contributions of capital gain property to which this subparagraph applies shall be taken into account after all other charitable contributions (other than charitable contributions to which subparagraph (D) applies).

(ii) If charitable contributions described in subparagraph (A) of capital gain property to which clause (i) applies exceeds 30 percent of the taxpayer's contribution base for any taxable year, such excess shall be treated, in a manner consistent with the rules of subsection (d)(1), as a charitable contribution of capital gain property to which clause (i) applies in each of the 5 succeeding taxable years in order of time.

(iii) At the election of the taxpayer (made at such time and in such manner as the Secretary prescribes by regulations), subsection (e)(1) shall apply to all contributions of capital gain property (to which subsection (e)(1)(B) does not otherwise apply) made by the taxpayer during the taxable year. If such an election is made, clauses (i) and (ii) shall not apply to contributions of capital gain property made during the taxable year, and, in applying subsection (d)(1) for such taxable year with respect to contributions of capital gain property made in any prior contribution year for which an election was not made under this clause, such contributions shall be reduced as if subsection (e)(1) had applied to such contributions in the year in which made.

(iv) For purposes of this subparagraph, the term "capital gain property" means, with respect to any contribution, any capital asset the sale of which at its fair market value at the time of the contribution would have resulted in gain which would have been long/term capital gain. For purposes of the preceding sentence, any property which is property used in the trade or business (as defined in section 1231(b)) shall be treated as a capital asset.

(D) Special limitation with respect to contributions of capital gain property to organizations not described in subparagraph (A).—

(i) I*N GENERAL.—In the case of charitable contributions (other than charitable contributions to which subparagraph (A) applies) of capital gain property, the total amount of such contributions of such property taken into account under subsection (a) for any taxable year shall not exceed the lesser of—*

(I) 20 percent of the taxpayer's contribution base for the taxable year, or

(II) the excess of 30 percent of the taxpayer's contribution base for the taxable year reduced by the amount of the contributions of capital gain property to which subparagraph (C) applies.

For purposes of this subsection, contributions of capital gain property to which this subparagraph applies shall be taken into account after all other charitable contributions.

(ii) C*ARRYOVER.—If the aggregate amount of contributions described in clause (i) exceeds the limitation of clause (i), such excess shall be treated (in a manner consistent with the rules of subsection (d)(1)) as a charitable contribution of capital gain property to which clause (i) applies in each of the 5 succeeding taxable years in order of time.*

[(D)] *(E)* CERTAIN PRIVATE FOUNDATIONS.—The private foundations referred to in subparagraph (A)(vii) and subsection (e)(1)(B) are—

(i) a private operating foundation (as defined in section 4942(j)(3)),

(ii) any other private foundation (as defined in section 509(a)) which, not later than the 15th day of the third month after the close of the foundation's taxable year in which contributions are received, makes qualifying distributions (as defined in section 4942(g), without regard to paragraph (3) thereof), which are treated, after the application of section 4942(g)(3), as distributions out of corpus (in accordance with section 4942(h)) in an amount equal to 100 percent of such contributions, and with respect to which the taxpayer obtains adequate records or other sufficient evidence from the foundation showing that the foundation made such qualifying distributions, and

(iii) a private foundation all of the contributions to which are pooled in a common fund and which would be described in section 509(a)(3) but for the right of any substantial contributor (hereafter in this clause called "donor") or his spouse to designate annually the recipients, from among organizations described in paragraph (1) of section 509(a), of the income attributable to the donor's contribution to the fund and to direct (by deed or by will) the payment, to an organization described in such paragraph (1), of the corpus in the common fund attributable to the donor's contribution; but this clause shall apply only if all of the income of the common fund is required to be (and is) distributed to one or more organizations described in such paragraph (1) not later than the 15th day of the third month after the close of the taxable year in which the income is realized by the fund and only if all of the corpus attributable to any donor's contribution to the fund is required to be (and is) distributed to one or more of such organizations not later than one year after his death or after the death of his surviving spouse if she has the right to designate the recipients of such corpus.

[(E)**]** *(F)* CONTRIBUTION BASE DEFINED.—For purposes of this section, the term "contribution base" means adjusted gross income (computed without regard to any net operating loss carryback to the taxable year under section 172).

* * * * * * *

(e) CERTAIN CONTRIBUTIONS OF ORDINARY INCOME AND CAPITAL GAIN PROPERTY.—

(1) GENERAL RULE.—The amount of any charitable contribution of property otherwise taken into account under this section shall be reduced by the sum of—

(A) the amount of gain which would not have been long-term capital gain if the property contributed had been sold by the taxpayer at its fair market value (determined at the time of such contribution), and

(B) in the case of a charitable contribution—

(i) of tangible personal property, if the use by the donee is unrelated to the purpose or function constituting the basis for its exemption under section 501 (or, in the case of a governmental unit, to any purpose or function described in subsection (c)), or

(ii) to or for the use of a private foundation (as defined in section 509(a)), other than a private foundation described in subsection (b)(1)**[**(D)**]**, *(E),*

40 percent ($^{28}/_{46}$ in the case of a corporation) of the amount of gain which would have been long-term capital gain if the property contributed had been sold by the taxpayer at its fair market value (determined at the time of such contribution).

For purposes of applying this paragraph (other than in the case of gain to which section 617(d)(1), 1245(a), 1250(a), **[**1251(c),**]** 1252(a), or 1254(a) applies), property which is property used in the trade or business (as defined in section 1231(b)) shall be treated as a capital asset.

(2) ALLOCATION OF BASIS.—For purposes of paragraph (1), in the case of a charitable contribution of less than the taxpayer's

entire interest in the property contributed, the taxpayer's adjusted basis in such property shall be allocated between the interest contributed and any interest not contributed in accordance with regulations prescribed by the Secretary.

(3) SPECIAL RULE FOR CERTAIN CONTRIBUTIONS OF INVENTORY AND OTHER PROPERTY.—

(A) QUALIFIED CONTRIBUTIONS.—For purposes of this paragraph, a qualified contribution shall mean a charitable contribution of property described in paragraph (1) or (2) of section 1221, by a corporation (other than a corporation which is an S corporation) to an organization which is described in section 501(c)(3) and is exempt under section 501(a) (other than a private foundation, as defined in section 509(a), which is not an operating foundation, as defined in section 4942(j)(3)), but only if—

(i) the use of the property by the donee is related to the purpose or function constituting the basis for its exemption under section 501 and the property is to be used by the donee solely for the care of the ill, the needy, or infants;

(ii) the property is not transferred by the donee in exchange for money, other property, or services;

(iii) the taxpayer receives from the donee a written statement representing that its use and disposition of the property will be in accordance with the provisions of clauses (i) and (ii); and

(iv) in the case where the property is subject to regulation under the Federal Food, Drug, and Cosmetic Act, as amended, such property must fully satisfy the applicable requirements of such Act and regulations promulgated thereunder on the date of transfer and for one hundred and eighty days prior thereto.

(B) AMOUNT OF REDUCTION.—The reduction under paragraph (1)(A) for any qualified contribution (as defined in subparagraph (A)) shall be no greater than the sum of—

(i) one-half of the amount computed under paragraph (1)(A) (computed without regard to this paragraph), and

(ii) the amount (if any) by which the charitable contribution deduction under this section for any qualified contribution (computed by taking into account the amount determined in clause (i), but without regard to this clause) exceeds twice the basis of such property.

(C) This paragraph shall not apply to so much of the amount of the gain described in paragraph (1)(A) which would be long-term capital gain but for the application of sections 617, 1245, 1250, [1251,] or 1252.

* * * * * * *

(5) SPECIAL RULE FOR CONTRIBUTIONS OF STOCK FOR WHICH MARKET QUOTATIONS ARE READILY AVAILABLE.—

(A) IN GENERAL.—Subparagraph (B)(ii) of paragraph (1) shall not apply to any contribution of qualified appreciated stock.

(B) **QUALIFIED APPRECIATED STOCK.**—*Except as provided in subparagraph (C), for purposes of this paragraph, the term "qualified appreciated stock" means any stock of a corporation—*

(i) for which (as of the date of the contribution) market quotations are readily available on an established securities market, and

(ii) which is capital gain property (as defined in subsection (b)(1)(C)(iv)).

(C) **DONOR MAY NOT CONTRIBUTE MORE THAN 10 PERCENT OF STOCK OF CORPORATION.**—

(i) **IN GENERAL.**—*In the case of any donor, the term "qualified appreciated stock" shall not include any stock of a corporation contributed by the donor in a contribution to which paragraph (1)(B)(ii) applies (determined without regard to this paragraph) if the amount of the stock so contributed (when increased by the aggregate amount of all prior such contributions by the donor of stock in such corporation) consists of 10 percent or more of the value of all of the outstanding stock of such corporation.*

(ii) **SPECIAL RULE.**—*For purposes of clause (i), an individual shall be treated as making all contributions made by any member of his family (as defined in section 267(c)(4)).*

(D) **TERMINATION.**—*This paragraph shall not apply to contributions made after December 31, 1993.*

(f) **DISALLOWANCE OF DEDUCTION IN CERTAIN CASES AND SPECIAL RULES.**—

(1) **IN GENERAL.**—No deduction shall be allowed under this section for a contribution to or for the use of an organization or trust described in section 508(d) or 4948(c)(4) subject to the conditions specified in such sections.

(2) **CONTRIBUTIONS OF PROPERTY PLACED IN TRUST.**—

(A) **REMAINDER INTEREST.**—In the case of property transferred in trust, no deduction shall be allowed under this section for the value of a contribution of a remainder interest unless the trust is a charitable remainder annuity trust or a charitable remainder unitrust (described in section 664), or a pooled income fund (described in section 642(c)(5)).

(B) **INCOME INTERESTS, ETC.**—No deduction shall be allowed under this section for the value of any interest in property (other than a remainder interest) transferred in trust unless the interest is in the form of a guaranteed annuity or the trust instrument specifies that the interest is a fixed percentage distributed yearly of the fair market value of the trust property (to be determined yearly) and the grantor is treated as the owner of such interest for purposes of applying section 671. If the donor ceases to be treated as the owner of such an interest for purposes of applying section 671, at the time the donor ceases to be so treated, the donor shall for purposes of this chapter be considered as having received an amount of income equal to the amount of any deduction he received under this section for the contribution reduced by the discounted value of all amounts of income earned by the trust and taxable to him before the time at which he ceases to be treated as the owner of the interest. Such amounts of income shall be discounted to the date of the contribution. The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subparagraph.

(C) DENIAL OF DEDUCTION IN CASE OF PAYMENTS BY CERTAIN TRUSTS.—In any case in which a deduction is allowed under this section for the value of an interest in property described in subparagraph (B), transferred in trust, no deduction shall be allowed under this section to the grantor or any other person for the amount of any contribution made by the trust with respect to such interest.

(D) EXCEPTION.—This paragraph shall not apply in a case in which the value of all interests in property transferred in trust are deductible under subsection (a).

(3) DENIAL OF DEDUCTION IN CASE OF CERTAIN CONTRIBUTIONS OF PARTIAL INTERESTS IN PROPERTY.—

(A) IN GENERAL.—In the case of a contribution (not made by a transfer in trust) of an interest in property which consists of less than the taxpayer's entire interest in such property, a deduction shall be allowed under this section only to the extent that the value of the interest contributed would be allowable as a deduction under this section if such interest had been transferred in trust. For purposes of this subparagraph, a contribution by a taxpayer of the right to use property shall be treated as a contribution of less than the taxpayer's entire interest in such property.

(B) EXCEPTIONS.—Subparagraph (A) shall not apply to—

(i) a contribution of a remainder interest in a personal residence or farm,

(ii) a contribution of an undivided portion of the taxpayer's entire interest in property, and

(iii) a qualified conservation contribution.

(4) VALUATION OF REMAINDER INTEREST IN REAL PROPERTY.—For purposes of this section, in determining the value of a remainder interest in real property, depreciation (computed on the straight line method) and depletion of such property shall be taken into account, and such value shall be discounted at a rate of 6 percent per annum, except that the Secretary may prescribe a different rate.

(5) REDUCTION FOR CERTAIN INTEREST.—If, in connection with any charitable contribution, a liability is assumed by the recipient or by any other person, or if a charitable contribution is of property which is subject to a liability, then, to the extent necessary to avoid the duplication of amounts, the amount taken into account for purposes of this section as the amount of the charitable contribution—

(A) shall be reduced for interest (i) which has been paid (or is to be paid) by the taxpayer, (ii) which is attributable to the liability, and (iii) which is attributable to any period after the making of the contribution, and

(B) in the case of a bond, shall be further reduced for interest (i) which has been paid (or is to be paid) by the taxpayer on indebtedness incurred or continued to purchase or carry such bond, and (ii) which is attributable to any period before the making of the contribution.

The reduction pursuant to subparagraph (B) shall not exceed the interest (including interest equivalent) on the bond which is attributable to any period before the making of the contribution and which is not (under the taxpayer's method of accounting) includible in the gross income of the taxpayer for any taxable year. For purposes of this paragraph, the term "bond" means any bond, debenture, note, or certificate or other evidence of indebtedness.

(6) DEDUCTIONS FOR OUT-OF-POCKET EXPENDITURES.—No deduction shall be allowed under this section for an out-of-pocket expenditure made by any person on behalf of an organization described in subsection (c) (other than an organization described in section 501(h)(5) (relating to churches, etc.)) if the expenditure is made for the purpose of influencing legislation (within the meaning of section 501(c)(3)).

(7) REFORMATIONS TO COMPLY WITH PARAGRAPH (2).—

(A) IN GENERAL.—A deduction shall be allowed under subsection (a) in respect of any qualified reformation.

(B) RULES SIMILAR TO SECTION 2055(E)(3) TO APPLY.—For purposes of this paragraph, rules similar to the rules of section 2055(e)(3) shall apply.

* * * * * * *

SEC. 172. NET OPERATIONS LOSS DEDUCTION.

(a) DEDUCTION ALLOWED.— * * *

(b) NET OPERATING LOSS CARRYBACKS AND CARRYOVERS.—

(1) YEARS TO WHICH LOSS MAY BE CARRIED.—* * *

(2) AMOUNT OF CARRYBACKS AND CARRYOVERS.—Except as provided in subsection (g), the entire amount of the net operating loss for any taxable year (hereinafter in this section referred to as the "loss year") shall be carried to the earliest of the taxable years to which (by reason of paragraph (1)) such loss may be carried. The portion of such loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of such loss over the sum of the taxable income for each of the prior taxable years to which such loss may be carried. For purposes of the preceding sentence, the taxable income for any such prior taxable year shall be computed—

(A) with the modifications specified in subsection (d) other than paragraphs (1), (4), and [(6)] *(5)* thereof; and

(B) by determining the amount of the net operating loss deduction—

(i) without regard to the net operating loss for the loss year or for any taxable year thereafter, and

(ii) without regard to that portion, if any, of a net operating loss for a taxable year attributable to a foreign expropriation loss, if such portion may not, under paragraph (1)(D), be carried back to such prior taxable year, and the taxable income so computed shall not be considered to be less than zero. For purposes of this paragraph, if a portion of the net operating loss for the loss year is attributable to a foreign expropriation loss to which paragraph (1)(D) applies, such portion shall be considered to be a separate net operating loss for such year to be applied after the other portion of such net operating loss, and, if a portion of a foreign expropriation loss for the loss year is attributable to a Cuban expropriation loss, such portion shall be considered to be a separate foreign expropriation loss for such year to be applied after the other portion of such foreign expropriation loss.

* * * * * * *

(d) MODIFICATIONS.—The modifications referred to in this section are as follows:

(1) NET OPERATING LOSS DEDUCTION.—No net operating loss deduction shall be allowed.

(2) CAPITAL GAINS AND LOSSES OF TAXPAYERS OTHER THAN CORPORATION.—In the case of a taxpayer other than a corporation—

(A) the amount deductible on account of losses from sales or exchanges of capital assets shall not exceed the amount includible on account of gains from sales or exchanges of capital assets; and

(B) the deduction for long-term capital gains provided by section 1202 shall not be allowed.

(3) DEDUCTION FOR PERSONAL EXEMPTIONS.—No deduction shall be allowed under section 151 (relating to personal exemptions). No deduction in lieu of any such deduction shall be allowed.

(4) NONBUSINESS DEDUCTIONS OF TAXPAYERS OTHER THAN CORPORATIONS.—In the case of a taxpayer other than a corporation, the deductions allowable by this chapter which are not attributable to a taxpayer's trade or business shall be allowed only to the extent of the amount of the gross income not derived from such trade or business. For purposes of the preceding sentence—

(A) any gain or loss from the sale or other disposition of—

(i) property, used in the trade or business, of a character which is subject to the allowance for depreciation provided in section 167, or

(ii) real property used in the trade or business,

shall be treated as attributable to the trade or business,

(B) the modifications specified in paragraphs (1), (2)(B), and (3) shall be taken into account;

(C) any deduction allowable under section 165(c)(3) (relating to casualty losses) shall not be taken into account; and

(D) any deduction allowed under section 404 [or section 405(c)] to the extent attributable to contributions which are made on behalf of an individual who is an employee within the meaning of section 401(c)(1) shall not be treated as attributable to the trade or business of such individual.

(5) COMPUTATION OF DEDUCTION FOR DIVIDENDS RECEIVED, ETC.—The deductions allowed by sections 243 (relating to dividends received by corporations), 244 (relating to dividends received on certain preferred stock of public utilities), and 245 (relating to dividends received from certain foreign corporations) shall be computed without regard to section 246 (b) (relating to limitation on aggregate amount of deductions); and the deduction allowed by section 247 (relating to dividends paid on certain preferred stock of public utilities) shall be computed without regard to subsection (a)(1)(B) of such section.

[7**]** *(6)* In the case of any taxable year for which part II of subchapter M (relating to real estate investment trusts) applies to the taxpayer—

(A) the net operating loss for such taxable year shall be computed by taking into account the adjustments described in section 857(b)(2) (other than the deduction for dividends paid described in section 857(b)(2)(B)); and

(B) where such taxable year is a "prior taxable year" referred to in paragraph (2) of subsection (b), the term "taxable income" in such paragraph shall mean "real estate investment trust taxable income" (as defined in section 857(b)(2)).

[8**]** *(7)* ZERO BRACKET AMOUNT.—In the case of a taxpayer other than a corporation, the zero bracket amount shall be treated as a deduction allowed by this chapter. For purposes of subsection (c)—

(A) the deduction provided by the preceding sentence shall be in lieu of any itemized deductions of the taxpayer, and

(B) such sentence shall not apply to an individual who elects to itemize deductions.

* * * * * * *

SEC. 173. CIRCULATION EXPENDITURES.

(a) GENERAL RULE.—Notwithstanding section 263, all expenditures (other than expenditures for the purchase of land or depreciable property or for the acquisition of circulation through the purchase of any part of the business of another publisher of a newspaper, magazine, or other periodical) to establish, maintain, or increase the circulation of a newspaper, magazine, or other periodical shall be allowed as a deduction; except that the deduction shall not be allowed with respect to the portion of such expenditures as, under regulations prescribed by the Secretary, is chargeable to capital account if the taxpayer elects, in accordance with such regulations, to treat such portion as so chargeable. Such election, if made, must be for the total amount of such portion of the expenditures which is so chargeable to capital account, and shall be binding for all subsequent taxable years unless, upon application by the taxpayer, the Secretary permits a revocation of such election subject to such conditions as he deems necessary.

(b) CROSS REFERENCE.—

For election of **[**10-year**]** *3-year* amortization of expenditures allowable as a deduction under subsection (a), see section 58(i).

* * * * * * *

SEC. 189. AMORTIZATION OF REAL PROPERTY CONSTRUCTION PERIOD INTEREST AND TAXES.

(a) Capitalization of Construction Period Interest and Taxes.—* * *

* * * * * * *

(e) Definitions.— For purposes of this section—

(1) Real property construction period interest and taxes.—The term "real property construction period interest and taxes" means all—

(A) interest paid or accrued on indebtedness incurred or continued to acquire, construct, or carry real property, and

(B) real property taxes,

to the extent such interest and taxes are attributable to the construction period for such property and would be allowable as a deduction under this chapter for the taxable year in which paid or accrued (determined without reagard to this section.) The Secretary shall prescribe regulations which provide for the allocation of interest to real property under construction.

(2) Construction period.—The term "construction period", when used with respect to any real property, means the period—

(A) beginning on the date on which construction of the building or other improvement begins, and

(B) ending on the date on which the item of property is ready to be placed in service or is ready to be held for sale.

(3) Nonresidential real property.—The term "nonresidential real property" means real property which is neither residential real property nor low-income housing.

(4) Residential real property.—The term "residential real property" means property which is or can reasonably be expected to be—

(A) residential rental property as defined in section 167(j)(2)(B), **[**or**]**

(B) real property described in section 1221(1) held for sale as dwelling units (within the meaning of section 167(k)(3)(C))**[**.**]**, *or*

(C) real property held by a cooperative housing corporation (as defined in section 216(b)) and used for dwelling purposes.

SEC. 196. DEDUCTION FOR CERTAIN UNUSED INVESTMENT CREDITS.

[(a) Allowance of Deductions.—If—

[(1) the amount of the credit determined under section 46(a)(2) for any taxable year exceeds the limitation provided by section 46(a)(3) for such taxable year, and

[(2) the amount of such excess has not, after the application of section 46(b), been allowed to the taxpayer as a credit under section 38 for any taxable year, then an amount equal to 50 percent of the amount of such excess (to the extent attributable to property the basis of which is reduced under section 48(q)) not so allowed as a credit shall be allowed to the taxpayer as a deduction for the first taxable year following the last taxable year in which such excess could under section 46(b) have been allowed as a credit.

[(b) TAXPAYERS DYING OR CEASING TO EXIST.—If a taxpayer dies or ceases to exist prior to the first taxable year following the last taxable year in which the excess described in subsection (a) could under section 46(b) have been allowed as a credit, the amount described in subsection (a), or the proper portion thereof, shall, under regulations prescribed by the Secretary, be allowed to the taxpayer as a deduction for the taxable year in which such death or cessation occurs.

(c) SPECIAL RULE FOR QUALIFIED REHABILITATED BUILDINGS.—In the case of any credit to which section 48(q)(3) applies, subsection (a) shall be applied without regard to the phrase "50 percent of".]

SEC. 196. DEDUCTION FOR CERTAIN UNUSED BUSINESS CREDITS.

(a) ALLOWANCE OF DEDUCTION.—If any portion of the qualified business credits determined for any taxable year has not, after the application of section 38(c), been allowed to the taxpayer as a credit under section 38 for any taxable year, an amount equal to the credit not so allowed shall be allowed to the taxpayer as a deduction for the first taxable year following the last taxable year for which such credit could, under section 39, have been allowed as a credit.

(b) TAXPAYER'S DYING OR CEASING TO EXIST.—If a taxpayer dies or ceases to exist before the first taxable year following the last taxable year for which the qualified business credits could, under section 39, have been allowed as a credit, the amount described in subsection (a) (or the proper portion thereof) shall, under regulations prescribed by the Secretary, be allowed to the taxpayer as a deduction for the taxable year in which such death or cessation occurs.

(c) QUALIFIED BUSINESS CREDITS.—For purposes of this section, the term "qualified business credits" means—

(1) the investment credit determined under section 46(a) (but only to the extent attributable to property the basis of which is reduced by section 48(q)),

(2) the targeted jobs credit determined under section 51(a), and

(3) the alcohol fuels credit determined under section 40(a).

(d) SPECIAL RULE FOR INVESTIMENT TAX CREDIT.—In the case of the investment credit determined under section 46(a) (other than a credit to which section 48(q)(3) applies), subsection (a) shall be applied by substituting "an amount equal to 50 percent of" for "an amount equal to".

PART VII—ADDITIONAL ITEMIZED DEDUCTIONS FOR INDIVIDUALS

* * * * * * *

SEC. 213. MEDICAL, DENTAL, ETC., EXPENSES.

(a) ALLOWANCE OF DEDUCTION.—* * *

* * * * * * *

(d) DEFINITIONS.—For purposes of this section—

(1) The term "medical care" means amounts paid—

(A) for the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body,

(B) for transportation primarily for and essential to medical care referred to in subparagraph (A), or

(C) for insurance (including amounts paid as premiums under part B of title XVIII of the Social Security Act, relating to supplementary medical insurance for the aged) covering medical care referred to in subparagraphs (A) or (B).

(2) AMOUNTS PAID FOR CERTAIN LODGING AWAY FROM HOME TREATED AS PAID FOR MEDICAL CARE.—Amounts paid for lodging (not lavish or extravagant under the circumstances) while away from home primarily for and essential to medical care referred to in paragraph (1)(A) shall be treated as amounts paid for medical care if—

(A) the medical care referred to in paragraph (1)(A) is provided by a physician in a licensed hospital (or in a medical care facility which is related to or the equivalent of a licensed hospital), and

(B) there is no significant element of personal pleasure, recreation, or vacation in the travel away from home.

The amount taken into account under the preceding sentence shall not exceed $50 for each night for each individual.

[(2)]*(3)* PRESCRIBED DRUG.—The term "prescribed drug" means a drug or biological which requires a prescription of a physician for its use by an individual.

[(3)]*(4)* PHYSICIAN.—The term "physician" has the meaning given to such term by section 1861(r) of the Social Security Act (42 U.S.C. 1395x(r)).

(5) SPECIAL RULE IN THE CASE OF CHILD OF DIVORCED PARENTS, ETC.—Any child to whom section 152(e) applies shall be treated as a dependent of both parents for purposes of this section.

[(4)]*(6)* In the case of an insurance contract under which amounts are payable for other than medical care referred to in subparagraphs (A) and (B) of paragraph (1)—

(A) no amount shall be treated as paid for insurance to which paragraph (1)(C) applies unless the charge for such insurance is either separately stated in the contract, or furnished to the policyholder by the insurance company in a separate statement,

(B) the amount taken into account as the amount paid for such insurance shall not exceed such charge, and

(C) no amount shall be treated a paid for such insurance if the amount specified in the contract (or furnished to the policyholder by the insurance company in a separate statement) as the charge for such insurance is unreasonably large in relation to the total charges under the contract.

[5]*(7)* Subject to the limitations of paragraph [(2)]*(6)* premiums paid during the taxable year by a taxpayer before he attains the age of 65 for insurance covering medical care (within the meaning of subparagraphs (A) and (B) of paragraph

(1)) for the taxpayer, his spouse, or a dependent after the taxpayer attains the age of 65 shall be treated as expenses paid during the taxable year for insurance which constitutes medical care if premiums for such insurance are payable (on a level payment basis) under the contract for a period of 10 years or more or until the year in which the taxpayer attains the age of 65 (but in no case for a period of less than 5 years).

[(6)] *(8)* The determination of whether an individual is married at any time during the taxable year shall be made in accordance with the provisions of section 6013(d) (relating to determination of status as husband and wife).

(e) EXCLUSION OF AMOUNTS ALLOWED FOR CARE OF CERTAIN DEPENDENTS.—Any expense allowed as a credit under section [44A] *21* shall not be treated as an expense paid for medical care.

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[SEC. 215. ALIMONY, ETC., PAYMENTS.

[(a) GENERAL RULE.—In the case of a husband described in section 71, there shall be allowed as a deduction amounts includible under section 71 in the gross income of his wife, payment of which is made within the husband's taxable year. No deduction shall be allowed under the preceding sentence with respect to any payment if, by reason of section 71 (d) or 682, the amount thereof is not includible in the husband's gross income.

[(b) CROSS REFERENCE.—]

[For definitions of "husband" and "wife", see section 7701(a)(17).]

SEC. 215. ALIMONY, ETC., PAYMENTS.

(a) GENERAL RULE.—In the case of an individual, there shall be allowed as a deduction an amount equal to alimony or separate maintenance payments paid during such individual's taxable year.

(b) ALIMONY OR SEPARATE MAINTENANCE PAYMENTS DEFINED.—For purposes of this section, the term "alimony or separate maintenance payments" means any alimony or separate maintenance payment (as defined in section 71(b)) which is includible in the gross income of the recipient under section 71.

(c) REQUIREMENT OF IDENTIFICATION NUMBER.—The Secretary may prescribe regulations under which—

(1) any individual receiving alimony or separate maintenance payments is required to furnish such individual's taxpayer identification number to the individual making such payments, and

(2) the individual making such payments is required to include such taxpayer identification number on such individual's return for the taxable year in which such payments are made.

(d) COORDINATION WITH SECTION 682.–No deduction shall be allowed under this section with respect to any payment if, by reason of section 682 (relating to income of alimony trusts), the amount thereof is not includible in such individual's gross income.

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SEC. 219 RETIREMENT SAVINGS.

(a) ALLOWANCE OF DEDUCTION * * *

(b) Maximum Amount of Deduction—

(1) In general.—The amount allowable as a deduction under subsection (a) to any individual for any taxable year shall not exceed the lesser of—

(A) $2,000, or

(B) an amount equal to the compensation includible in the individual's gross income for such taxable year.

(2) Special rules for employer contributions under simplified employee pensions.—

(A) Limitation.—If there is an employer contribution on behalf of the employee to a simplified employee pension, an employee shall be allowed as a deduction under subsection (a) (in addition to the amount allowable under paragraph (1)) an amount equal to the lesser of—

(i) 15 percent of the compensation from such employer includible in the employee's gross income for the taxable year (determined without regard to the employer contribution to the simplified employee pension), or

(ii) the amount contributed by such employer to the simplified employee pension and included in gross income (but not in excess of [$15,000] *the limitation in effect under section 415(c)(1)(A)).*

* * * * * * *

(4) Certain divorced individuals.

(A) In general.—In the case of an individual to whom this paragraph applies, the limitation of paragraph (1) shall not be less than the lesser of—

(i) $1,125, or

(ii) the sum of the amount referred to in paragraph (1)(B) and any qualifying alimony received by the individual during the taxable year.

(B) Qualifying alimony.—For purposes of this paragraph, the term "qualifying alimony" means amounts includible in the individual's gross income [under paragraph (1) of section 71(a) (relating to decree of divorce or separate maintenance).] *under section 71 (relating to alimony and separate maintenance payments) by reason of payment under a decree of divorce or separate maintenance or a written instrument incident to such a decree.*

* * * * * * *

(d) Other Limitations and Restrictions.—

(1) Beneficiary must be under age 70½.—No deduction shall be allowed under this section with respect to any qualified retirement contribution for the benefit of an individual if such individual has attained age 70½ before the close of such individual's taxable year for which the contribution was made.

(2) Recontributed amounts.—No deduction shall be allowed under this section with respect to a rollover contribution described in section 402(a)(5), 402(a)(7), 403(a)(4), 403(b)(8), [405(d)(3), 408(d)(3), or 409(b)(3)(C)] *or 408(d)(3).*

(3) Amounts contributed under endowment contract.—In the case of an endowment contract described in section 408(b), no deduction shall be allowed under this section for that portion of the amounts paid under the contract for the taxable year which is properly allocable, under regulations prescribed by the Secretary, to the cost of life insurance.

(4) Denial of deduction for amount contributed to inherited annuities or accounts.—No deduction shall be allowed under this section with respect to any amount paid to an inherited individual retirement account or individual retirement annuity (within the meaning of section 408(d)(3)(C)(ii)).

(5) Denial of deductions for designated nondeductible contributions.—No deduction shall be allowed under this section with respect to any designated nondeductible contribution (as defined in section 4973(c)(2)).

(e) Definition of Retirement Savings Contributions, Etc.—For purposes of this section—

(1) Qualified retirement contribution.—The term "qualified retirement contribution" means—

(A) any qualified voluntary employee contribution paid in cash by the individual for the taxable year, and

(B) any amount paid in cash for the taxable year by or on behalf of such individual for his benefit to an individual retirement plan.

[For purposes of the preceding sentence, the term "individual retirement plan" includes a retirement bond described in section 409 only if the bond is not redeemed within 12 months of its issuance.]

(2) Qualified voluntary employee contribution.—

(A) In general.—The term "qualified voluntary employee contribution" means any voluntary contribution—

(i) which is made by an individual as an employee under a qualified employer plan or government plan, which plan allows an employee to make contributions which may be treated as qualified voluntary employee contributions under this section, and

(ii) with respect to which the individual has not designated such contribution as a contribution which should not be taken into account under this section.

(B) Voluntary contribution.—For purposes of subparagraph (A), the term "voluntary contribution" means any contribution which is not a mandatory contribution (within the meaning of section 411(c)(2)(C)).

(C) Designation.—For purposes of determining whether or not an individual has made a designation described in subparagraph (A)(ii) with respect to any contribution during any calendar year under a qualified employer plan or government plan, such individual shall be treated as having made such designation if he notifies the plan administrator of such plan, not later than the earlier of—

(i) April 15 of the succeeding calendar year, or

(ii) the time prescribed by the plan administrator,

that the individual does not want such contribution taken into account under this section. Any designation or notification referred to in the preceding sentence shall be made in such manner as the Secretary shall by regulations prescribe and, after the last date on which such designation or notification may be made, shall be irrevocable for such taxable year.

(3) *QUALIFIED EMPLOYER PLAN*.—The term "qualified employer plan" means—

(A) a plan described in section 401(a) which includes a trust exempt from tax under section 501(a),

(B) an annuity plan described in section 403(a), *and*

[(C) a qualified bond purchase plan described in section 405(a), and]

[(D)] *(C)* a plan under which amounts are contributed by an individual's employer for an annuity contract described in section 403(b).

(4) GOVERNMENT PLAN.—The term "government plan" means any plan, whether or not qualified, established and maintained for its employees by the United States, by a State or political subdivision thereof, or by an agency or instrumentality of any of the foregoing.

(5) PAYMENTS FOR CERTAIN PLANS.—The term "amounts paid to an individual retirement plan" includes amounts paid for an individual retirement annuity or a retirement bond.

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PART VIII—SPECIAL DEDUCTIONS FOR CORPORATIONS

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SEC. 243. DIVIDENDS RECEIVED BY CORPORATIONS.

(a) GENERAL RULE.—In the case of a corporation, there shall be allowed as a deduction an amount equal to the following percentages of the amount received as dividends from a domestic corporation which is subject to taxation under this chapter:

(1) 85 percent, in the case of dividends other than dividends described in paragraph (2) or (3);

(2) 100 percent, in the case of dividends received by a small business investment company operating under the Small Business Investment Act of 1958 (15 U.S.C. 661 and following); and

(3) 100 percent, in the case of qualifying dividends (as defined in subsection (b)(1)).

(b) QUALIFYING DIVIDENDS.—

(1) DEFINITION.—For purposes of subsection (a)(3), the term "qualifying dividends" means dividends received by a corporation which, at the close of the day the dividends are received, is a member of the same affiliated group of corporations (as defined in paragraph (5)) as the corporation distributing the dividends, if—

(A) such affiliated group has made an election under paragraph (2) which is effective for the taxable years of its members which include such day, and either

(B) such dividends are distributed out of earnings and profits of a taxable year of the distributing corporation ending after December 31, 1963—

(i) on each day of which the distributing corporation and the corporation receiving the dividends were members of such affiliated group, and

(ii) for which an election under section 1562 (relating to election of multiple surtax exemptions) is not effective, or

(C) such dividends are paid by a corporation with respect to which an election under section 936 is in effect for the taxable year in which such dividends are paid.

(2) ELECTION.—An election under this paragraph shall be made for an affiliated group by the common parent corporation, and shall be made for any taxable year of the common parent corporation at such time and in such manner as the Secretary by regulations prescribes. Such election may not be made for an affiliated group for any taxable year of the common parent corporation for which an election under section 1562 is effective. Each corporation which is a member of such group at any time during its taxable year which includes the last day of such taxable year of the common parent corporation must consent to such election at such time and in such manner as the Secretary by regulations prescribes. An election under this paragraph shall be effective—

(A) for the taxable year of each member of such affiliated group which includes the last day of the taxable year of the common parent corporation with respect to which the election is made, and

(B) for the taxable year of each member of such affiliated group which ends after the last day of such taxable year of the common parent corporation but which does not include such date, unless the election is terminated under paragraph (4).

(3) EFFECT OF ELECTION.—If an election by an affiliated group is effective with respect to a taxable year of the common parent corporation, then under regulations prescribed by the Secretary—

(A) no member of such affiliated group may consent to an election under section 1562 for such taxable year,

(B) the members of such affiliated group shall be treated as one taxpayer for purposes of making the election under section 901(a) (relating to allowance of foreign tax credit), and

(C) the members of such affiliated group shall be limited to one—

(i) minimum accumulated earnings credit under section 535(c)(2) or (3),

(ii) $400,000 limitation for certain expenditures under section 617(h)(1), and

[(iii) $25,000 limitation on small business deduction of life insurance companies under sections 804(a)(3) and 809(d)(10), and]

[(iv)] *(iii)* surtax exemption, and one amount under section 6154(c)(2) and section 6655(e)(2), for purposes of estimated tax payment requirements under section

6154 and the addition to the tax under section 6655 for failure to pay estimated tax.

(4) Termination.—An election by an affiliated group under paragraph (2) shall terminate with respect to the taxable year of the common parent corporation and with respect to the taxable years of the members of such affiliated group which include the last day of such taxable year of the common parent corporation if—

(A) Consent of members.—Such affiliated group files a termination of such election (at such time and in such manner as the Secretary by regulations prescribes) with respect to such taxable year of the common parent corporation, and each corporation which is a member of such affiliated group at any time during its taxable year which includes the last day of such taxable year of the common parent corporation consents to such termination, or

(B) Refusal by new member to consent.—During such taxable year of the common parent corporation such affiliated group includes a member which—

(i) was not a member of such group during such common parent corporation's immediately preceding taxable year, and

(ii) such member files a statement that it does not consent to the election at such time and in such manner as the Secretary by regulations prescribes.

(5) Definition of affiliated group.—For purposes of this subsection, the term "affiliated group" has the meaning assigned to it by section 1504(a), except that for such purposes sections 1504(b)(2), 1504(b)(4), and 1504(c) shall not apply.

(6) Special rules for insurance companies.—If an election under this subsection is effective for the taxable year of an insurance company subject to taxation under section [802] *801* or 821—

(A) part II of subchapter B of chapter 6 (relating to certain controlled corporations) shall be applied without regard to section 1563(a)(4) (relating to certain insurance companies) and section 1563(b)(2)(D) (relating to certain excluded members) with respect to such company and the other corporations which are members of the controlled group of corporations (as determined under section 1563 without regard to subsections (a)(4) and (b)(2)(D)) of which such company is a member, and

(B) for purposes of paragraph (1), a distribution by such company out of earnings and profits of a taxable year for which an election under this subsection was not effective, and for which such company was not a component member of a controlled group of corporations within the meaning of section 1563 solely by reason of section 1563(b)(2)(D), shall not be a qualifying dividend.

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PART IX—ITEMS NOT DEDUCTIBLE

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Sec. 269. Acquisitions made to evade or avoid income tax.
Sec. 269A. Personal service corporations formed or availed of to avoid or evade income tax.
Sec. 269B. Stapled entities.

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SEC. 264. CERTAIN AMOUNTS PAID IN CONNECTION WITH INSURANCE CONTRACTS.

(a) GENERAL RULE.—No deduction shall be allowed for—

(1) Premiums paid on any life insurance policy covering the life of any officer or employee, or of any person financially interested in any trade or business carried on by the taxpayer, when the taxpayer is directly or indirectly a beneficiary under such policy.

(2) Any amount paid or accured on indebtedness incurred or continued to purchase or carry a single premium life insurance, endowment, or annuity contract.

(3) Except as provided in subsection (c), any amount paid or accrued on indebtedness incurred or continued to purchase or carry a life insurance, endowment, or annuity contract (other than a single premium contract or a contract treated as a single premium contract) pursuant to a plan of purchase which contemplates the systematic direct or indirect borrowing of part or all of the increases in the cash value of such contract (either from the insurer or otherwise).

Paragraph (2) shall apply in respect of annuity contracts only as to contracts purchased after March 1, 1954. Paragraph (3) shall apply only in respect of contracts purchased after August 6, 1963.

(b) CONTRACTS TREATED AS SINGLE PREMIUM CONTRACTS.—For purposes of subsection (a)(2), a contract shall be treated as a single premium contract—

(1) if substantially all the premiums on the contract are paid within a period of 4 years from the date on which the contract is purchased, or

(2) if an amount is deposited after March 1, 1954, with the insurer for payment of a substntial number of future premiums on the contract.

(c) EXCEPTIONS.—Subsection (a)(3) shall not apply to any amount paid or accured by a person during a taxable year on indebtedness incurred or continued as part of a plan referred to in subsection (a)(3)—

(1) if no part of 4 of the annual premiums due during the 7-year period (beginning with the date the first premium on the contract to which such plan relates was paid) is paid under such plan by menas of indebtedness,

(2) if the total of the amounts paid or accured by such person during such taxable year for which (without regard to this paragraph) no deduction would be allowable by reason of subsection (a)(3) does not exceed $100,

(3) if such amount was paid or accrued on indebtedness incurred because of an unforeseen substantial loss of income or unforeseen substantial increase in his financial obligations, or

(4) if such indebtedness was incurred in connection with his trade or business.

For purposes of applying paragraph (1), if there is a substantial increase in the premiums on a contract, a new 7-year period described in such paragraph with respect to such contract shal commence on the date the first such increased premium is paid.

(d) Limitation on Interest Deduction in the Case of Life Insurance Loans.—

(1) In general.—The amount otherwise allowable as a deduction under this chapter for life insurance interest shall not exceed the applicable limit for the taxable year.

(2) Applicable limit.—For purposes of this subsection—

(A) In general.—The applicable limit for any taxable year is an amount equal to the product of—

(i) the applicable dollar limit for the taxable year, multiplied by

(ii) the annual rate prescribed under section 6621 which is in effect as of the first day of the taxable year.

(B) Indefinite carryover of unused limit.—If the applicable limit for any taxable year exceeds the amount of the life insurance interest paid or accrued during such taxable year, the amount of the applicable limit for the succeeding taxable year shall be increased by the amount of such excess.

(3) Applicable dollar amount.—

(A) Individuals.— In the case of an individual, the applicable dollar amount for any taxable year shall be $250,000 ($500,000 in the case of a joint return).

(B) Corporations, etc.—

(i) In general.—In the case of any corporation, partnership, proprietorship, or other entity engaged in a trade or business, the applicable dollar amount shall be $500,000 times the number of qualified lives.

(ii) Qualified lives.—For purposes of clause (i), the term "qualified life" means any individual if—

(I) such corporation, partnership, proprietorship, or other entity had a policy of life insurance (other than term) on the life of such individual at some time during the taxable year, and

(II) the face amount of such insurance policy was not less than 10 percent of the highest face amount of any whole life insurance policy carried by such corporation or other entity on the life of any employee.

For purposes of the preceding sentence, a proprietor shall be treated as an employee of the proprietorship.

(4) Definitions and special rules.—For purposes of this subsection—

(A) Life insurance interest.—The term "life insurance interest" means any interest paid or accrued on a life insur-

ance loan which (without regard to this subsection) is allowable as a deduction under this chapter for the taxable year.

(B) Life insurance loan.—Except as provided in subparagraph (C), the term "life insurance loan" means any indebtedness—

(i) incurred under a life insurance, endowment, or annuity contract,

(ii) secured by a life insurance, endowment, or annuity contract, or

(iii) incurred or continued to purchase or carry a life insurance, endowment, or annuity contract.

Such term shall not include any indebtedness the interest on which is not allowable as a deduction under this chapter for the taxable year (determined without regard to this subsection).

(C) Exception for loans on policies issued before September 28, 1983.—The term "life insurance loan" shall not include any indebtedness which (but for this subparagraph) would be a life insurance loan if the life insurance, endowment, or annuity contract referred to in subparagraph (B)—

(i) was issued before September 28, 1983, or

(ii) was issued on or after such date pursuant to a binding contract entered into before such date.

* * * * * * *

SEC. 267. LOSSES, EXPENSES, AND INTEREST WITH RESPECT TO TRANSACTIONS BETWEEN RELATED TAXPAYERS.

[(a) Deductions Disallowed.—No deduction shall be allowed—

[(1) Losses.—In respect of losses from sales or exchanges of property (other than losses in cases of distributions in corporate liquidations), directly or indirectly, between persons specified within any one of the paragraphs of subsection (b).

[(2) Unpaid expenses and interest.—In respect of expenses, otherwise deductible under section 162 or 212, or of interest, otherwise deductible under section 163—

[(A) If within the period consisting of the taxable year of the taxpayer and 2½ months after the close of (i) such expenses or interest are not paid, and (ii) the amount thereof is not includible in the gross income of the person to whom the payment is to be made; and

[(B) If, by reason of the method of accounting of the person to whom the payment is to be made, the amount thereof is not, unless paid, includible in the gross income of such person for the taxable year in which or with which the taxable year of the taxpayer ends; and

[(C) If, at the close of the taxable year of the taxpayer or at any time within 2½ months thereafter, both the taxpayer and the person to whom the payment is to be made are persons specified within any one of the paragraphs of subsection (b).]

(a) In General.—

(1) Deduction for losses disallowed.—No deduction shall be allowed in respect of any loss from the sale or exchange of

property (other than a loss in case of a distribution in corporate liquidation), directly or indirectly, between persons specified in any of the paragraphs of subsection (b).

(2) MATCHING OF DEDUCTION AND PAYEE INCOME ITEM IN THE CASE OF EXPENSES AND INTEREST.—If—

(A) by reason of the method of accounting of the person to whom the payment is to be made, the amount thereof is not (unless paid) includible in the gross income of such person, and

(B) at the close of the taxable year of the taxpayer for which (but for this paragraph) the amount would be deductible under this chapter, both the taxpayer and the person to whom the payment is to be made are persons specified in any of the paragraphs of subsection (b),

then any deduction allowable under this chapter in respect of such amount shall be allowable as of the day as of which such amount is includible in the gross income of the person to whom the payment is made (or, if later, as of the day on which it would be so allowable but for this paragraph).

(b) RELATIONSHIPS.—The persons referred to in subsection (a) are:

(1) Members of a family, as defined in subsection (c)(4);

(2) An individual and a corporation more than 50 percent in value of the outstanding stock of which is owned, directly or indirectly, by or for such individual;

[(3) Two corporations more than 50 percent in value of the outstanding stock of each of which is owned, directly or indirectly, by or for the same individual, if either one of such corporations, with respect to the taxable year of the corporation preceding the date of the sale or exchange was, under the law applicable to such taxable year, a personal holding company or a foreign personal holding company;]

(3) Two corporations which are members of the same controlled group (as defined in subsection (f));

(4) A grantor and a fiduciary of any trust;

(5) A fiduciary of a trust and a fiduciary of another trust, if the same person is a grantor of both trusts;

(6) A fiduciary of a trust and a beneficiary of such trust;

(7) A fiduciary of a trust and a beneficiary of another trust, if the same person is a grantor of both trusts;

(8) A fiduciary of a trust and a corporation more than 50 percent in value of the outstanding stock of which is owned, directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust;

(9) A person and an organization to which section 501 (relating to certain educational and charitable organizations which are exempt from tax) applies and which is controlled directly or indirectly by such person or (if such person is an individual) by members of the family of such individual;

(10) [An S] *A* corporation and a partnership if the same persons own—

(A) more than 50 percent in value of the outstanding stock of the [S] corporation, and

(B) more than 50 percent of the capital interest, or the profits interest, in the partnership;

(11) An S corporation and another S corporation if the same persons own more than 50 percent in value of the outstanding stock of each corporation; or

(12) An S corporation and a C corporation, if the same [individual] *persons* owns more than 50 percent in value of the outstanding stock of each corporation.

* * * * * * *

[(e) RULE WHERE LAST DAY OF 2½ MONTH PERIOD FALLS ON SUNDAY, ETC.—For purposes of subsection (a)(2)—

[(1) where the last day of the 2½ month period falls on Saturday, Sunday, or a legal holiday, such last day shall be treated as falling on the next succeeding day which is not a Saturday, Sunday, or a legal holiday, and

[(2) the determination of what contitutes a legal holiday shall be made under section 7503 with respect to the payor's return of tax under this chapter for the preceding taxable year.

[(f) SPECIAL RULES FOR UNPAID EXPENSES AND INTEREST OF S CORPORATIONS.—

[(1) IN GENERAL.—In the case of any amount paid or incurred by an S corporation, if—

[(A) by reason of the method of accounting of the person to whom the payment is to be made, the amount thereof is not (unless paid) includible in the gross income of such person, and

[(B) at the close of the taxable year of the S corporation for which (but for this paragraph) the amount would be deductible under section 162, 212, or 163, both the S corporation and the person to whom the payment is to be paid are persons specified in one of the paragraphs of subsecton (b),

then no deduction shall be allowed in respect of expenses otherwise deductible under section 162 or 212, or of interest otherwise deductible under section 163, before the day as of which the amount thereof is includible in the gross income of the person to whom the payment is made.

[(2) CERTAIN SHAREHOLDERS, ETC., TREATED AS RELATED PERSONS.—For purposes of applying paragraph (1)—

[(A) an S corporation,

[(B) any person who owns, directly or indirectly, 2 percent or more in value of the outstanding stock of such corporation, and

[(C) any person related (within the meaning of subsection (b) of this section or section 707(b)(1)(A)) to a person described in subparagraph (B),

shall be treated as persons specified in a paragraph of subsection (b).

[(3) SUBSECTION (a)(2) NOT TO APPLY.—Subsection (a)(2) shall not apply to any amount paid or incurred by an S corporation.]

(e) SPECIAL RULES FOR PASS-THRU ENTITIES.—

(1) IN GENERAL.—In the case of any amount paid or incurred by, to, or on behalf of, a pass-thru entity, for purposes of applying subsection (a)(2)—

(A) such entity,

(B) in the case of—

(i) a partnership, any person who owns (directly or indirectly) any capital interest or profits interest of such partnership, or

(ii) an S corporation, any person who owns (directly or indirectly) any of the stock of such corporation,

(C) any person who owns (directly or indirectly) any capital interest or profits interest of a partnership in which such entity owns (directly or indirectly) any capital interest or profits interest, and

(D) any person related (within the meaning of subsection (b) of this section or section 707(b)(1)) to a person described in subparagraph (B) or (C),

shall be treated as persons specified in a paragraph of subsection (b).

(2) PASS-THRU ENTITY.—For purposes of this section, the term "pass-thru entity" means—

(A) a partnership, and

(B) an S corporation.

(3) CONSTRUCTIVE OWNERSHIP IN THE CASE OF PARTNERSHIPS.—For purposes of determining ownership of a capital interest or profits interest of a partnership, the principles of subsection (c) (other than paragraph (3)) shall apply.

(4) SUBSECTION (a)(2) NOT TO APPLY TO CERTAIN GUARANTEED PAYMENTS OF PARTNERSHIPS.—In the case of any amount paid or incurred by a partnership, subsection (a)(2) shall not apply to the extent that section 707(c) applies to such amount.

(f) CONTROLLED GROUP DEFINED.—For purposes of subsection (b)(3), the term 'controlled group' has the meaning given to such term by section 1563(a), except that—

(1) "more than 50 percent" shall be substituted for "at least 80 percent" each place it appears in section 1563(a), and

(2) the determination shall be made without regard to subsections (a)(4) and (e)(3)C) of section 1563.

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SEC. 269. ACQUISITIONS MADE TO EVADE OR AVOID INCOME TAX.

(a) IN GENERAL.—If—

(1) any person or persons acquire, or acquired on or after October 8, 1940, directly or indirectly, control of a corporation, or

(2) any corporation acquires, or acquired on or after October 8, 1940, directly or indirectly, property of another corporation, not controlled, directly or indirectly, immediately before such acquisition, by such acquiring corporation or its stockholders, the basis of which property, in the hands of the acquiring corporation, is determined by reference to the basis in the hands of the transferor corporation,

and the principal purpose for which such acquisition was made is evasion or avoidance of federal income tax by securing the benefit of a deduction, credit, or other allowance which such person or corporation would not otherwise enjoy, then the Secretary may disallow such deduction, credit, or other allowance. for purposes of paragraphs (1) and (2), control means the ownership of stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote or at least 50 percent of the total value of shares of all classes of stock of the corporation.

(b) Certain Liquidations After Qualified Stock Purchases.—

(1) In general.—If—

(A) there is a qualified stock purchase by a corporation of another corporation,

(B) an election is not made under section 338 with respect to such purchase,

(C) the acquired corporation is liquidated pursuant to a plan of liquidation adopted not more than 2 years after the acquisition date, and

(D) the principal purpose for such liquidation is the evasion or avoidance of Federal income tax by securing the benefit of a deduction, credit, or other allowance which the acquiring corporation would not otherwise enjoy,

then the Secretary may disallow such deduction, credit, or other allowance.

(2) Meaning of terms.—For purposes of paragraph (1), the terms "qualified stock purchase" and "acquisition date" have the same respective meanings as when used in section 338.

[(b)]*(c)* Power of Secretary To Allow Deduction, etc., in Part.—In any case to which subsection (a) *or (b)* applies the Secretary is authorized—

(1) to allow as a deduction, credit, or allowance any part of any amount disallowed by such subsection, if he determines that such allowance will not result in the evasion or avoidance of Federal income tax for which the acquisition was made; or

(2) to distribute, apportion, or allocate gross income, and distribute apportion, or allocate the deductions, credits, or allowances the benefit of which was sought to be secured, between or among the corporations, or properties, or parts thereof, involved, and to allow such deductions, credits, or allowances so distributed, apportioned, or allocated, but to give effect to such allowance only to such extent as he determines will not result in the evasion or avoidance of Federal income tax for which the acquisition was made; or

(3) to exercise his powers in part under paragraph (1) and in part under paragraph (2).

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SEC. 269B. STAPLED ENTITIES.

(a) General Rule.—Except as otherwise provided by regulations, for purposes of this title—

(1) if a domestic corporation and a foreign corporation are stapled entities, the foreign corporation shall be treated as a domestic corporation.

(2) in applying section 1563, stock in a second corporation which constitutes a stapled interest with respect to stock of a first corporation shall be treated as owned by such first corporation, and

(3) in applying subchapter M for purposes of determining whether any stapled entity is a regulated investment company

or a real estate investment trust, all entities which are stapled entities with respect to each other shall be treated as 1 entity.

(b) SECRETARY TO PRESCRIBE REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to prevent avoidance or evasion of Federal income tax through the use of stapled entities. Such regulations may include (but shall not be limited to) regulations providing the extent to which 1 of such entities shall be treated as owning the other entity (to the extent of the stapled interest).

(c) DEFINITIONS.—For purposes of this section—

(1) ENTITY.—The term "entity" means any corporation, partnership, trust, association, estate, or other form of carrying on a business or activity.

(2) STAPLED ENTITIES.—The term "stapled entities" means any group of 2 or more entities if more than 50 percent in value of the beneficial ownership in each of such entities consists of stapled interests.

(3) STAPLED INTERESTS.—Two or more interests are stapled interests if, by reason of form of ownership, restrictions on transfer, or other forms or conditions, in connection with the transfer of 1 of such interests the other such interests are also transferred or required to be transferred.

(d) SPECIAL RULE FOR TREATIES.—Nothing in section 894 or 7852(d) or in any other provision of law shall be construed as permitting an exemption, by reason of any treaty obligation of the United States heretofore or hereafter entered into, from the provisions of this section.

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SEC. 280C. CERTAIN EXPENSES FOR WHICH CREDITS ARE ALLOWABLE.

[(a) RULE FOR SECTION 40 CREDIT.—No deduction shall be allowed for that portion of the work incentive program expenses paid or incurred for the taxable year which is equal to the amount of the credit allowable for the taxable year under section 40 (relating to credit for expenses of work incentive programs) determined without regard to the provisions of section 50A(a)(2) (relating to limitation based on amount of tax). In the case of a corporation which is a member of a controlled group of corporations (within the meaning of section 50B(g)(1)) or a trade or business which is treated as being under common control with other trades or businesses (within the meaning of section 50B(g)(2), this subsection shall be applied under rules prescribed by the Secretary similar to the rules applicable under paragraphs (1) and (2) of section 50B(g).]

[(b)] *(a)* RULE FOR [SECTION 44B] *TARGETED JOBS* CREDIT.—No deduction shall be allowed for that portion of the wages or salaries paid or incurred for the taxable year which is equal to the amount of the credit [allowable] *determined* for the taxable year under section [44B (relating to credit for employment of certain new employees) determined without regard to the provisions of section 53 (relating to limitation based on amount of tax).] *51(a).* In the case of a corporation which is a member of a controlled group of corporations (within the meaning of section 52(a)) or a trade or business which is treated as being under common control with other trades or businesses (within the meaning of section 52(b)), this subsection shall be applied under rules prescribed by the Secretary similar to the rules applicable under subsections (a) and (b) of section 52.

[(c)] *(b)* CREDIT FOR QUALIFIED CLINICAL TESTING EXPENSES FOR CERTAIN DRUGS.—

(1) IN GENERAL.—No deduction shall be allowed for that portion of the qualified clinical testing expenses (as defined in section [44H] *29*(b)) otherwise allowable as a deduction for the taxable year which is equal to the amount of the credit allowable for the taxable year under section [44H] *29* (determined without regard to subsection (d)(2) thereof).

(2) SIMILAR RULE WHERE TAXPAYER CAPITALIZES RATHER THAN DEDUCTS EXPENSES.—If—

(A) the amount of the credit allowable for the taxable year under section [44H] *29* (determined without regard to subsection (d)(2) thereof), exceeds

(B) the amount allowable as a deduction for the taxable year for qualified clinical testing expenses (determined without regard to paragraph (1)),

the amount chargeable to capital account for the taxable year for such expenses shall be reduced by the amount of such excess.

(3) CONTROLLED GROUPS.—In the case of a corporation which is a member of a controlled group of corporations (within the meaning of section [44F] *30*(f)(5)) or a trade or business which is treated as being under common control with other trades or business (within the meaning of section [44F] *30*(f)(1)(B)), this subsection shall be applied under rules prescribed by the Secretary similar to the rules applicable under subparagraphs (A) and (B) of section [44F] *30*(f)(1).

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PART XI—SPECIAL RULES RELATING TO CORPORATE PREFERENCE ITEMS

Sec. 291. Special rules relating to corporate preference items.

SEC. 291. SPECIAL RULES RELATING TO CORPORATE PREFERENCE ITEMS.

(a) 15-PERCENT REDUCTION IN CERTAIN PREFERENCE ITEMS, ETC.—For purposes of this subtitle, in the case of a corporation—

(1) SECTION 1250 CAPITAL GAIN TREATMENT.—In the case of section 1250 property which is disposed of during the taxable year, 15 percent of the excess (if any) of—

(A) the amount which would be treated as ordinary income if such property was section 1245 property or section 1245 recovery property, over

(B) the amount treated as ordinary income under section 1250 *(determined without regard to this paragraph),*

shall be treated as gain which is ordinary income *under section 1250* and shall be recognized notwithstanding any other provision of this title. Under regulations prescribed by the Secretary, the provisions of this paragraph shall not apply to the disposition of any property to the extent section 1250(a) does not apply to such disposition by reason of section 1250(d).

(2) Reduction in percentage depletion.—In the case of iron ore and coal (including lignite), the amount allowable as a deduction under section 613 with respect to any property (as defined in section 614) shall be reduced by 15 percent of the amount of the excess (if any) of—

(A) the amount of the deduction allowable under section 613 for the taxable year (determined without regard to this paragraph), over

(B) the adjusted basis of the property at the close of the taxable year (determined without regard to the depletion deduction for the taxable year).

(3) Certain financial institution preference items.—The amount allowable as a deduction under this chapter (determined without regard to this section) with respect to any financial institution preference item shall be reduced by 15 percent.

(4) Certain deferred DISC income.—If a corporation is a shareholder of a DISC, in the case of taxable years beginning after December 31, 1982, section 995(b)(1)(F)(i) shall be applied with respect to such corporation by substituting "57.5 percent" for "one-half".

(5) Amortization of pollution control facilities.—If an election is made under section 169 with respect to any certified pollution control facility, the amortizable basis of such facility for purposes of such section shall be reduced by 15 percent.

(b) Special Rules for Treatment of Intangible Drilling Costs and Mineral Exploration and Development Costs.—For purposes of this subtitle, in the case of a corporation—

(1) In general.—The amount allowable as a deduction for any taxable year (determined without regard to this section)—

(A) under section 263(c) in the case of an integrated oil company, or

(B) under section 616(a) or 617,

shall be reduced by 15 percent.

(2) Special rule for amounts not allowable as deductions under paragraph (1)—

(A) Intangible drilling costs.—The amount not allowable as a deduction under section 263(c) for any taxable year by reason of paragraph (1) shall be allowable as a deduction ratably over the 36-month period beginning with the month in which the costs are paid or incurred.

(B) Mineral exploration and development costs.—In the case of any amount not allowable as a deduction under section 616(a) or 617 for any taxable year by reason of paragraph (1)—

(i) the applicable percentage of the amount not so allowable as a deduction shall be allowable as a deduction for the taxable year in which the costs are paid or incurred and in each of the 4 succeeding taxable years, and

(ii) *in the case of a deposit located in the United States,* such costs shall be treated, for purposes of determining the amount of the credit allowable under section 38 for the taxable year in which paid or incurred, as qualified investment (within the meaning of subsections (c) and (d) of section 46) with respect to property placed in service during such year.

(3) APPLICABLE PERCENTAGE.—For purposes of paragraph (2)(B), the term "applicable percentage" means the percentage determined in accordance with the following table:

Taxable Year:	*Applicable Percentage:*
1	15
2	22
3	21
4	21
5	21

(4) DISPOSITIONS.—

(A) OIL, GAS, AND GEOTHERMAL PROPERTY.—In the case of any disposition of any oil, gas, or geothermal property to which section 1254 applies (determined without regard to this section) any deduction under paragraph (2)(A) with respect to intangible drilling and development costs under section 263(c) which are allocable to such property shall, for purposes of section 1254, be treated as a deduction allowable under section 263(c).

(B) APPLICATION OF SECTION 617(d).—In the case of any disposition of mining property to which section 617(d) applies (determined without regard to this section), any amount allowable as a deduction under paragraph (2)(B) which is allocable to such property shall, for purposes of section 617(d), be treated as a deduction allowable under section 617(a).

(C) RECAPTURE OF INVESTMENT CREDIT.—In the case of any disposition of any property to which the credit allowable under section 38 by reason of paragraph (2)(B) is allocable, such disposition shall, for purposes of section 47, be treated as a disposition of section 38 recovery property which is not 3-year property.

(5) INTEGRATED OIL COMPANY DEFINED.—For purposes of this subsection, the term "integrated oil company" means, with respect to any taxable year, any producer (within the meaning of section 4996(a)(1)) of crude oil other than an independent producer (within the meaning of section 4992(b)).

[(6) COORDINATION WITH COST DEPLETION.—The portion of the adjusted basis of any property which is attributable to intangible drilling and development costs or mining exploration and development costs shall not be taken into account for purposes of determining depletion under section 611.**]**

(6) COORDINATION WITH COST DEPLETION.—The portion of the adjusted basis of any property which is attributable to amounts to which paragraph (1) applied shall not be taken into account for purposes of determining depletion under section 611.

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(e) DEFINITIONS.—For purposes of this section—

(1) FINANCIAL INSTITUTION PREFERENCE ITEM.—The term "financial institution preference item" includes the following:

(A) EXCESS RESERVES FOR LOSSES ON BAD DEBTS OF FINANCIAL INSTITUTIONS.—In the case of a financial institution to which section 585 or 593 applies, the excess of—

(i) the amount which would, but for this section, be allowable as a deduction for the taxable year for a reasonable addition to a reserve for bad debts, over

(ii) the amount which would have been allowable had such institution maintained its bad debt reserve for all taxable years on the basis of actual experience.

(B) INTEREST ON DEBT TO CARRY TAX-EXEMPT OBLIGATIONS ACQUIRED AFTER DECEMBER 31, 1982.—

(i) IN GENERAL.—In the case of a financial institution to which section 585 or 593 applies, the amount of interest on indebtedness incurred or continued to purchase or carry obligations acquired after December 31, 1982, the interest on which is exempt from taxes for the taxable year, to the extent that a deduction would (but for this paragraph) be allowable with respect to such interest for such taxable year.

(ii) DETERMINATION OF INTEREST ALLOCABLE TO INDEBTEDNESS ON TAX-EXEMPT OBLIGATIONS.—Unless the taxpayer (under regulations prescribed by the Secretary) establishes otherwise, the amount determined under clause (i) shall be an amount which bears the same ratio to the aggregate amount allowable (determined without regard to this section) to the taxpayer as a deduction for interest for the taxable year as—

(I) the taxpayer's average adjusted basis (within the meaning of section 1016) of obligations described in clause (i), bears to

(II) such average adjusted basis for all assets of the taxpayer.

(iii) INTEREST.—For purposes of this subparagraph, the term "interest" includes amounts (whether or not designated as interest) paid in respect of deposits, investment certificates, or withdrawable or repurchasable shares.

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Subchapter C—Corporate Distributions and Adjustments

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PART I—DISTRIBUTIONS BY CORPORATIONS

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Subpart A—Effects on Recipients

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SEC. 301. DISTRIBUTIONS OF PROPERTY.

(a) IN GENERAL.—* * *

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(e) SPECIAL RULES.—

(1) For distributions in redemption of stock, see section 302.

(2) For distributions in [partial or] complete liquidation, see part II (sec. 331 and following).

(3) For distributions in corporate organizations and reorganizations, see part III (sec. 351 and following).

(4) For partial exclusion from gross income of dividends received by individuals, see section 116.

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SEC. 302. DISTRIBUTIONS IN REDEMPTION OF STOCK.

(a) GENERAL RULE.— * * *

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(f) CROSS REFERENCES.—

For special rules relating to redemption—

(1) DEATH TAXES.—Of stock to pay death taxes, see section 303.

Section 306 Stock.—Of section 306 stock, see section 306.

(3) Liquidations.—Of stock in [partial or] complete liquidation, see section 331.

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SEC. 304. REDEMPTION THROUGH USE OF RELATED CORPORATIONS.

(a) TREATMENT OF CERTAIN STOCK PURCHASES.—

(1) ACQUISITION BY RELATED CORPORATION (OTHER THAN SUBSIDIARY).—For purposes of sections 302 and 303, if—

(A) one or more persons are in control of each of two corporations, and

(B) in return for property, one of the corporations acquires stock in the other corporation from the person (or persons) so in control,

then (unless paragraph (2) applies) such property shall be treated as a distribution in redemption of the stock of the corporation acquiring such stock. In any such case, the stock so acquired shall be treated as having been transferred by the person from whom acquired, and as having been received by the corporation acquiring it, as a contribution to the capital of such corporation.

(2) ACQUISITION BY SUBSIDIARY.—For purposes of sections 302 and 303—

(A) in return for property, one corporation acquires from a shareholder of another corporation stock in such other corporation, and

(B) the issuing corporation controls the acquiring corporation.

then such property shall be treated as a distribution in redemption of the stock of the issuing corporation.

(b) SPECIAL RULES FOR APPLICATION OF SUBSECTION (a).—

(1) Rule for determinations under section 302(b).—In the case of any acquisition of stock to which subsection (a) of this section applies, determinations as to whether the acquisition is, by reason of section 302 (b), to be treated as a distribution in part or full payment in exchange for the stock shall be made by reference to the stock of the issuing corporation. In applying section 318(a) (relating to constructive ownership of stock) with respect to section 302(b) for purposes of this paragraph, sections 318(a)(2)(C) and 318(a)(3)(C) shall be applied without regard to the 50 percent limitation contained therein.

(2) Amount constituting dividend.—

[(A) Where subsection (a)(1) applies.—In the case of any acquisition of stock to which paragraph (1) (and not paragraph (2)) of subsection (a) of this section applies, the determination of the amount which is a dividend shall be made as if the property were distributed by the issuing corporation to the acquiring corporation and immediately thereafter distributed by the acquiring corporation.]

(A) Where subsection (a)(1) applies.—In the case of any acquisition of stock to which paragraph (1) (and not paragraph (2)) of subsection (a) applies, the determination of the amount which is a dividend shall be made as if the property were distributed—

(i) by the acquiring corporation to the extent of its earnings and profits, and

(ii) then by the issuing corporation.

(B) Where subsection (a)(2) applies.—In the case of any acquisition of stock to which subsection (a)(2) of this section applies, the determination of the amount which is a dividend shall be made as if the property were distributed by the acquiring corporation to the issuing corporation and immediately thereafter distributed by the issuing corporation.

(3) Coordination with section 351.—

(A) Property treated as received in redemption.—Except as otherwise provided in this paragraph, subsection (a) [(and not part III)] *(and not section 351 and not so much of sections 357 and 358 as relates to section 351)* shall apply to any property received in a distribution described in subsection (a).

(B) Certain assumptions of liability, etc.—

(i) In general.—[Subsection (a)] *Subparagraph (A)* shall not apply to any liability—

(I) assumed by the acquiring corporation, or

(II) to which the stock is subject,

if such liability was incurred by the transferor to acquire the stock *from a person none of whose stock is attributable to the transferor under section 318(a) (other than paragraph (4) thereof)*. For purposes of the preceding sentence, the term "stock" means stock referred to in paragraph (1)(B) or (2)(A) of subsection (a).

(ii) Extension of obligations, etc.—For purposes of clause (i), an extension, renewal, or refinancing of a liability which meets the requirements of clause (i) shall be treated as meeting such requirements.

(C) DISTRIBUTIONS INCIDENT TO FORMATION OF BANK HOLDING COMPANIES.—If—

(i) pursuant to a plan, control of a bank is acquired and within 2 years after the date on which such control is acquired, stock constituting control of such bank is transferred to to a BHC in connection with its formation.

(ii) incident to the formation of the BHC there is a distribution of property described in subsection (a), and

(iii) the shareholders of the BHC who receive distributions of such property do not have control of such BHC,

then, subsection (a) shall not apply to any securities received by a qualified minority shareholder incident to the formation of such BHC. *For purposes of this subparagraph, any assumption of (or acquisition of stock subject to) a liability under subparagraph (B) shall not be treated as a distribution of property.*

(D) DEFINITIONS AND SPECIAL RULE.—For purposes of subparagraph (C) and this subparagraph—

(i) QUALIFIED MINORITY SHAREHOLDER.—The term "qualified minority shareholder" means any shareholder who owns less than 10 percent (in value) of the stock of the BHC. For purposes of the preceding sentence, the rules of paragraph (3) of subsection (c) shall apply.

(ii) BHC.—The term "BHC" means a bank holding company (within the meaning of section 2(a) of the Bank Holding Company Act of 1956).

(iii) SPECIAL RULE IN CASE OF BHC'S FORMED BEFORE 1985.—In the case of a BHC which is formed before 1985, clause (i) of subparagraph (C) shall not apply.

(c) CONTROL.—

(1) IN GENERAL.—For purposes of this section, control means the ownership of stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote, or at least 50 percent of the total value of shares of all classes of stock. If a person (or persons) is in control (within the meaning of the preceding sentence) of a corporation which in turn owns at least 50 percent of the total combined voting power of all stock entitled to vote of another corporation, or owns at least 50 percent of the total value of the shares of all classes of stock of another corporation, then such person (or persons) shall be treated as in control of such other corporation.

(2) STOCK ACQUIRED IN THE TRANSACTION.—For purposes of subsection (a)(1)—

(A) GENERAL RULE.—Where 1 or more persons in control of the issuing corporation transfer stock of such corporation in exchange for stock of the acquiring corporation, the stock of the acquiring corporation received shall be taken into account in determining whether such person or persons are in control of the acquiring corporation.

(B) DEFINITION OF CONTROL GROUP.—Where 2 or more persons in control of the issuing corporation transfer stock of such corporation to acquiring corporation and, after the transfer, the transferors are in control of the acquiring corporation, the person or persons in control of each corporation shall include each of the persons who so transfer stock.

[(3) CONSTRUCTIVE OWNERSHIP.—Section 318(a) (relating to the constructive ownership of stock) shall apply for purposes of determining control under this section. For purposes of the preceding sentence, sections 318(a)(2)(C) and 318(a)(3)(C) shall be applied without regard to the 50 percent limitation contained therein.]

(3) CONSTRUCTIVE OWNERSHIP.—

(A) IN GENERAL.—Section 318(a) (relating to constructive ownership of stock) shall apply for purposes of determining control under this section.

(B) MODIFICATION OF 50-PERCENT LIMITATIONS IN SECTION 318.—For purposes of subparagraph (A)—

(i) paragraph (2)(C) of section 318(a) shall be applied by substituting "5 percent" for "50 percent", and

(ii) paragraph (3)(C) of section 318(a) shall be applied—

(I) by substituting "5 percent" for "50 percent", and

(II) in any case where such paragraph would not apply but for subclause (I), by considering a corporation as owning the stock (other than stock in such corporation) owned by or for any shareholder of such corporation in that proportion which the value of the stock which such shareholder owned in such corporation bears to the value of all stock in such corporation.

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SEC. 306. DISPOSITIONS OF CERTAIN STOCK.

(a) GENERAL RULE.—* * *

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(c) SECTION 306 DEFINED.—

(1) IN GENERAL.—For purposes of this subchapter, the term "section 306 stock" means stock which meets the requirements of subparagraph (A), (B), or (C) of this paragraph.

(A) DISTRIBUTED TO SELLER.—Stock (other than common stock issued with respect to common stock) which was distributed to the shareholder selling or otherwise disposing of such stock if, by reason of section 305(a), any part of such distribution was not includible in the gross income of the shareholder.

(B) RECEIVED IN A CORPORATE REORGANIZATION OR SEPARATION.—Stock which is not common stock and—

(i) which was received, by the shareholder selling or otherwise disposing of such stock, in pursuance of a plan of reorganization (within the meaning of section 368(a)), or in a distribution or exchange to which section 355 (or so much of section 356 as relates to section 355) applied, and

(ii) with respect to the receipt of which gain or loss to the shareholder was to any extent not recognized by reason of part III, but only to the extent that either the effect of the transaction was substantially the same as the receipt of a stock dividend, or the stock was received in exchange for section 306 stock.

For purposes of this section, a receipt of stock to which the foregoing provisions of this subparagraph apply shall be treated as a distribution of stock.

(C) STOCK HAVING TRANSFERRED OR SUBSTITUTED BASIS.—Except as otherwise provided in subparagraph (B), stock the basis of which (in the hands of the shareholder selling or otherwise disposing of such stock) is determined by reference to the basis (in the hands of such shareholder or any other person) of section 306 stock.

(2) EXCEPTION WHERE NO EARNINGS AND PROFITS.—For purposes of this section, the term "section 306 stock" does not include any stock not part of the distribution of which would have been a dividend at the time of the distribution if money had been distributed in lieu of the stock.

(3) CERTAIN STOCK ACQUIRED IN SECTION 351 EXCHANGE.—The term "section 306 stock" also includes any stock which is not common stock acquired in an exchange to which section 351 applied if receipt of money (in lieu of stock) would have been treated as a dividend to any extent. [In the case of such stock, rules similar to the rules of section 304(b)(2) shall apply for purposes of this section.] *Rules similar to the rules of section 304(b)(2) shall apply—*

(A) for purposes of the preceding sentence, and

(B) for purposes of determining the application of this section to any subsequent disposition of stock which is section 306 stock by reason of an exchange described in the preceding sentence.

(4) APPLICATION OF ATTRIBUTION RULES FOR CERTAIN PURPOSES.—For purposes of paragraph (1)(B)(ii) and (3), section 318(a) shall apply. [For purposes of applying the preceding sentence to paragraph (3), sections 318(a)(2)(C) and 318(a)(3)(C) shall be applied without regard to the 50 percent limitation contained therein.] *For purposes of applying the preceding sentence to paragraph (3), the rules of section 304(c)(3)(B) shall apply.*

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Subpart B—Effects on Corporation

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SEC. 311. TAXABILITY OF CORPORATION ON DISTRIBUTION.

(a) GENERAL RULE.— * * *

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(e) DEFINITIONS AND SPECIAL RULES FOR SUBSECTION (d)(2).—For purposes of subsection (d)(2) and this subsection—

(1) QUALIFIED STOCK.—

(A) IN GENERAL.—The term "qualified stock" means stock held by a person (other than a corporation) who at all times during the lesser of—

(i) the 5-year period ending on the date of distribution, or

(ii) the period during which the distributing corporation (or a predecessor corporation) was in existence,

held at least 10 percent in value of the outstanding stock of the distributing corporation (or predecessor corporation).

(B) DETERMINATION OF STOCK HELD.—Section 318 shall apply in determining ownership of stock under subparagraph (A); except that, in applying section 318(a)(1), the term "family" includes any individual described in section 267(c)(4) and any spouse of any such individual.

(C) RULES FOR PASSTHRU ENTITIES.—In the case of an S corporation, partnership, trust, or estate—

(i) the termination of whether subparagraph (A) is satisfied shall be made at the shareholder, partner, or beneficiary level (rather than at the entity level), and

(ii) the distribution shall be treated as made directly to the shareholders, partners, or beneficiaries in proportion to their respective interests in the entity.

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Subpart C—Definitions; Constructive Ownership of Stock

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SEC. 318. CONSTRUCTIVE OWNERSHIP OF STOCK.

(a) GENERAL RULE.—For purposes of those provisions of this subchapter to which the rules contained in this section are expressly made applicable—

(1) MEMBERS OF FAMILY.—

(A) IN GENERAL.—An individual shall be considered as owning the stock owned, directly or indirectly, by or for—

(i) his spouse (other than a spouse who is legally separated from the individual under a decree of divorce or separate maintenance), and

(ii) his children, grandchildren, and parents.

(B) EFFECT OF ADOPTION.—For purposes of subparagraph (A)(ii), a legally adopted child of an individual shall be treated as a child of such individual by blood.

(2) ATTRIBUTION FROM PARTNERSHIPS, ESTATES, TRUSTS, AND CORPORATIONS.—

(A) FROM PARTNERSHIPS AND ESTATES.—Stock owned, directly or indirectly, by or for a partnership or estate shall be considered as owned proportionately by its partners or beneficiaries.

(B) FROM TRUSTS.—

(i) Stock owned, directly or indirectly, by or for a trust (other than an employees' trust described in section 401(a) which is exempt from tax under section 501(a)) shall be considered as owned by its beneficiaries in proportion to the actuarial interest of such beneficiaries in such trust.

(ii) Stock owned, directly or indirectly, by or for any portion of a trust of which a person is considered the owner under subpart E of part I of subchapter J (relating to grantors and others treated as substantial owners) shall be considered as owned by such person.

(C) FROM CORPORATIONS.—If 50 percent or more in value of the stock in a corporation is owned, directly or indirectly, by or for any person, such person shall be considered as owning the stock owned, directly or indirectly, by or for such corporation, in that proportion which the value of the stock which such person so owns bears to the value of all the stock in such corporation.

(3) ATTRIBUTION TO PARTNERSHIPS, ESTATES, TRUSTS, AND CORPORATIONS.—

(A) TO PARTNERSHIPS AND ESTATES.—Stock owned, directly or indirectly, by or for a partner or a beneficiary of an estate shall be considered as owned by the partnership or estate.

(B) TO TRUSTS.—

(i) Stock owned, directly or indirectly, by or for a beneficiary of a trust (other than an employees' trust described in section 401(a) which is exempt from tax under section 501(a)) shall be considered as owned by the trust, unless such beneficiary's interest in the trust is a remote contingent interest. For purposes of this clause, a contingent interest of a beneficiary in a trust shall be considered remote if, under the maximum exercise of discretion by the trustee in favor of such beneficiary, the value of such interest, computed actuarially, is 5 percent or less of the value of the trust property.

(ii) Stock owned, directly or indirectly, by or for a person who is considered the owner of any portion of a trust under subpart E of part I of subchapter J (relating to grantors and others treated as substantial owners) shall be considered as owned by the trust.

(C) TO CORPORATIONS.—If 50 percent or more in value of the stock in a corporation is owned, directly or indirectly, by or for any person, such corporation shall be considered as owning the stock owned, directly or indirectly, by or for such person.

(4) OPTIONS.—If any person has an option to acquire stock, such stock shall be considered as owned by such person. For purposes of this paragraph, an option to acquire such an option, and each one of a series of such options, shall be considered as an option to acquire such stock.

(5) OPERATING RULES.—

(A) In general.—Except as provided in subparagraphs (B) and (C), stock constructively owned by a person by reason of the application of paragraph (1), (2), (3), or (4), shall for purposes of applying paragraphs (1), (2), (3), and (4), be considered as actually owned by such person.

(B) Members of family.—Stock constructively owned by an individual by reason of the application of paragraph (1) shall not be considered as owned by him for purposes of again applying paragraph (1) in order to make another the construction owner of such stock.

(C) Partnerships, estates, trusts, and corporations.—Stock constructively owned by a partnership, estate, trust, or corporation by reason of the application of paragraph (3) shall not be considered as owned by it for purposes of applying paragraph (2) in order to make another the constructive owner of such stock.

(D) Option rule in lieu of family rule.—For purposes of this paragraph, if stock may be considered as owned by an individual under paragraph (1) or (4), it shall be considered as owned by him under paragraph (4).

(E) S corporation treated as partnership.—For purposes of this subsection—

(i) an S corporation shall be treated as a partnership, and

(ii) any shareholder of the S corporation shall be treated as a partner of such partnership.

The preceding sentence shall not apply for purposes of determining whether stock in the S corporation is constructively owned by any person.

(b) Cross References.—

For provisions to which the rules contained in subsection (a) apply, see—

(1) section 302 (relating to redemption of stock);

(2) section 304 (relating to redemption by related corporations);

(3) section 306(b)(1)(A) (relating to disposition of section 306 stock);

(4) section 338(h)(3)**[**(B) (relating to purchase of stock from subsidiaries, etc.)**]** *(defining purchase)*;

(5) section 382(a)(3) (relating to special limitations on net operating loss carryovers);

(6) section 856(d) (relating to definition of rents from real property in the case of real estate investment trusts);

(7) section 958(b) (relating to constructive ownership rules with respect to controlled foreign corporations); and

(8) section 6038(d)(1) (relating to information with respect to certain foreign corporations).

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PART II—CORPORATE LIQUIDATIONS

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Subpart B—Effects on Corporation

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SEC. 338. CERTAIN STOCK PURCHASES TREATED AS ASSET ACQUISITIONS.

(a) General Rule.—For purposes of this subtitle, if a purchasing corporation makes an election under this section (or is treated under subsection (e) as having made such an election), then, in the case of any qualified stock purchase, the target corporation—

(1) shall be treated as having sold all of its assets at the close of the acquisition date *at fair market value* in a single transaction to which section 337 applies, and

(2) shall be treated as a new corporation which purchased all of the assets referred to in paragraph (1) as of the beginning of the day after the acquisition date.

(b) Price at Which Deemed Sale Made.—

[(1) In general.—For purposes of subsection (a), the assets of the target corporation shall be treated as sold (and purchased) at an amount equal to—

[(A) the grossed-up basis of the purchasing corporation's stock in the target corporation on the acquisition date,

[(B) properly adjusted under regulations prescribed by the Secretary for liabilities of the target corporation and other relevant items.

[(2) Grossed-up basis.—For purposes of paragraph (1), the grossed-up basis shall be an amount equal to the basis of the purchasing corporation's stock in the target corporation on the acquisition date multiplied by a fraction—

[(A) the numerator of which is 100 percent, and

[(B) the denominator of which is the percentage of stock (by value) of the target corporation held by the purchasing corporation on the acquisition date.

[(3) Allocation among assets.—The amount determined under paragraph (1) shall be allocated among the assets of the target corporation under regulations prescribed by the Secretary.]

(b) Basis of Assets After Deemed Purchase.—

(1) In general.—For purposes of subsection (a), the assets of the target corporation shall be treated as purchased at an amount equal to their adjusted fair market value.

(2) Adjusted fair market value.—For purposes of paragraph (1), the term "adjusted fair market value" means the excess (if any) of—

(A) the aggregate fair market value of the assets of the target corporation as of the close of the acquisition date, over

(B) the amount of the net unrealized appreciation determined under paragraph (3).

(3) Amount of net unrealized appreciation.—For purposes of paragraph (2), the amount of the net unrealized appreciation determined under this paragraph is the excess (if any) of—

(A) the fair market value of stock of the target corporation which is held by the purchasing corporation on the acquisition date, over

(B) the aggregate bases of stock described in subparagraph (A).

(4) Allocation among assets.—The amount determined under paragraph (1) shall be allocated among the assets of the target corporation under regulations prescribed by the Secretary.

(5) Adjustments for contingent payments, etc.—Under regulations prescribed by the Secretary, proper adjustments shall be made in the application of this subsection and subsection (a) for continent payments and other relevant items.

(c) Special Rules.—

(1) Coordination with section 337 where purchasing corporation holds less than 100 percent of stock.—If during the 1-year period beginning on the acquisition date the maximum percentage (by value) of stock in the target corporation held by the purchasing corporation is less than 100 percent, then in applying section 337 for purposes of subsection (a)(1), the nonrecognition of gain or loss shall be limited to an amount determined by applying such maximum percentage to such gain or loss. The preceding sentence shall not apply if the target corporation is liquidated during such 1-year period *and section 333 does not apply to such liquidation.*

(2) Certain redemptions where election made.—If, in connection with a qualified stock purchase with respect to which an election is made under this section, the target corporation makes a distribution in complete redemption of all of the stock of a shareholder which qualifies under section 302(b)(3) (determined without regard to the application of section 302(c)(2)(A)(ii)), section 336 shall apply to such distribution as if it were a distribution in complete liquidation.

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(g) Election.—

[(1) When made.—Except as otherwise provided in regulations, an election under this section shall be made not later than 75 days after the acquisition date.]

(1) When made.—Except as otherwise provided in regulations, an election under this section shall be made not later than the 15th day of the 9th month beginning after the month in which the acquisition date occurs.

(2) Manner.—An election by the purchasing corporation under this section shall be made in such manner as the Secretary shall by regulations prescribe.

(3) Election irrevocable.—An election by a purchasing corporation under this section, once made, shall be irrevocable.

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(h) Definitions and Special Rules.—For purposes of this section—

(1) 12-month acquisition period.—The term "12-month acquisition period" means the 12-month period beginning with the date of the first acquisition by purchase of stock included in a qualified stock purchase *(or, if any of such stock was acquired in an acquisition which is a purchase by reason of subparagraph (C) of paragraph (3), the date on which the acquiring*

corporation is first considered under section 318(a) (other than paragraph (4) thereof) as owning stock owned by the corporation from which such acquisition was made).

(2) Acquisition date.—The term "acquisition date" means, with respect to any corporation, the first day on which there is a qualified stock purchase with respect to the stock of such corporation.

(3) Purchase.—

(A) In general.—The term "purchase" means any acquisition of stock, but only if—

(i) the basis of the stock in the hands of the purchasing corporation is not determined (I) in whole or in part by reference to the adjusted basis of such stock in the hands of the person from whom acquired, or (II) under section 1014(a) (relating to property acquired from a decedent),

(ii) the stock is not acquired in an exchange to which section 351 applies, and

(iii) the stock is not acquired from a person the ownership of whose stock would, under section 318(a) (other than paragraph (4) thereof), be attributed to the person acquiring such stock.

[(B) Deemed purchase of stock of subsidiaries.—If stock in a corporation is acquired by purchase (within the meaning of subparagraph (A)) and, as a result of such acquisition, the corporation making such purchase is treated (by reason of section 318(a)) as owning stock in a 3rd corporation, the corporation making such purchase shall be treated as having purchased such stock in such 3rd corporation. The corporation making such purchase shall be treated as purchasing stock in the 3rd corporation by reason of the preceding sentence on the first day on which the purchasing corporation is considered under section 318(a) as owning such stock.**]**

(B) Deemed purchase under subsection (a).—The term "purchase" includes any deemed purchase under subsection (a)(2).

(C) Certain stock acquisitions from related corporations.—

(i) In general.—Clause (iii) of subparagraph (A) shall not apply to an acquisition of stock from a related corporation if at least 50 percent in value of the stock of such related corporation was acquired by purchase (within the meaning of subparagraphs (A) and (B)).

(ii) Certain distributions.—Clause (i) of subparagraph (A) shall not apply to an acquisition of stock described in clause (i) of this subparagraph if the corporation acquiring such stock—

(I) made a qualified stock purchase of stock of the related corporation, and

(II) made an election under this section (or is treated under subsection (e) as having made such

an election) with respect to such qualified stock purchase.

(iii) Related corporation defined.—For purposes of this subparagraph, a corporation is a related corporation if stock owned by such corporation is treated (under section 318(a) other than paragraph (4) thereof) as owned by the corporation acquiring the stock.

(4) Consistency period.—

(A) In general.—Except as provided in subparagraph (B), the term "consistency period" means the period consisting of—

(i) the 1-year period before the beginning of the 12-month acquisition period for the target corporation,

(ii) such acquisition period (up to and including the acquisition date), and

(iii) the 1-year period beginning on the day after the acquisition date.

(B) Extension where there is plan.—The period referred to in subparagraph (A) shall also include any period during which the Secretary determines that there was in effect a plan to make a qualified stock purchase plus 1 or more other qualified stock purchases (or asset acquisitions described in subsection (e)) with respect to the target corporation or any target affiliate.

(5) Affiliated group.—The term "affiliated group" has the meaning given to such term by section 1504(a) (determined without regard to the exceptions contained in section 1504(b)).

(6) Target affiliate.—

(A) In general.—A corporation shall be treated as a target affiliate of the target corporation if each of such corporations was, at any time during so much of the consistency period as ends on the acquisition date of the target corporation, a member of an affiliated group which had the same common parent.

(B) Certain foreign corporations, etc.—Except as otherwise provided in regulations (and subject to such conditions as may be provided in regulations)—

(i) the term "target affiliate" does not include a foreign corporation, a DISC, a corporation described in section 934(b), or a corporation to which an election under section 936 applies, and

(ii) stock held by a target affiliate in a foreign corporation or a domestic corporation which is a DISC or described in section 1248(e) shall be excluded from the operation of this section.

[(7) Acquisitions by purchasing corporation include acquisitions by corporations affiliated with purchasing corporation.—Except as otherwise provided in regulations, an acquisition of stock or assets by any member of an affiliated group which includes a purchasing corporation shall be treated as made by the purchasing corporation.]

(7) Additional percentage must be attributable to purchase, etc.—For purposes of subsection (c)(1), any increase in the maximum percentage of stock taken into account over the

percentage of stock (by value) of the target corporation held by the purchasing corporation on the acquisition date shall be taken into account only to the extent such increase is attributable to—

(A) purchase, or

(B) a redemption by the target corporation—

(i) to which section 302(a) applies, or

(ii) in the case of a shareholder who is not a corporation, to which section 301 applies.

(8)ACQUISITON BY AFFILIATED CORPORATIONS TAKEN INTO ACCOUNT FOR CONSISTENCY PURPOSES.—For purposes of subsections (e) and (f), except as otherwise provided in regulations, an affiliated group shall be treated as 1 corporation.

[(8)]*(9)* TARGET NOT TREATED AS MEMBER OF AFFILIATED GROUP.—Except as otherwise provided in paragraph [(9)]*(10)* or in regulations prescribed under this paragraph, the target corporation shall not be treated as a member of an affiliated group with respect to the sale described in subsection (a)(1).

[(9)]*(10)* ECLECTIVE RECOGNITION OF GAIN OF LOSS BY TARGET CORPORATION, TOGETHER WITH NONRECOGNITION OF GAIN OR LOSS ON STOCK BY SELLING CONSOLIDATED GROUP.—

(A) IN GENERAL.—Under regulations prescribed by the Secretary, an election may be made under which if—

(i) the target corporation was, before the transaction, a member of the selling consolidated group, and

(ii) the target corporation recognizes gain or loss with respect to the transaction as if it sold all of its assests in a single transaction,

then the target corporation shall be treated as a member of the selling consolidated group with respect to such sale, and (to the extent provided in regulations) no gain or loss will be recognized on stock sold or exchanged in the transaction by members of the selling consolidated group.

(B) SELLING CONSOLIDATED GROUP.—For purposes of subparagraph (A), the term "selling consolidate group" means any group of corporations which (for the taxable period which includes the transaction)—

(i) includes the target corporation, and

(ii) files a consolidated return.

(11) SECTION 337 TO APPLY WHERE TARGET HAD ADOPTED PLAN FOR COMPLETE LIQUIDATION.—If—

(A) during the 12-month period ending on the acquisition date the target corporation adopted a plan of complete liquidation,

(B) such plan was not rescinded before the close of the acquisition date, and

(C) the purchasing corporation makes an election under this section (or is treated under subsection (e) as having made such an election) with respect to the target corporation,

then, subject to rules similar to the rules of subsection (c)(1), for purposes of section 337 (and other provisions which relate to section 337), the target corporation shall be treated as having *distributed all of its assets as of the close of the acquisition date.*

(12) TAX ON DEEMED SALE NOT TAKEN INTO ACCOUNT FOR ESTIMATED TAX PURPOSES.—For purposes of section 6655, tax attributable to the sale described in subsection (a)(1) shall not be taken into account.

(13) COORDINATION WITH SECTION 341.—For purposes of determining whether section 341 applies to a disposition within 1 year after the acquisition date of stock by a shareholder (other than the acquiring corporation) who held stock in the target corporation on the acquisition date, section 341 shall be applied without regard to this section.

[(i) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to ensure that the purposes of this section to require consistency of treatment of stock and asset purchases with respect to a target corporation and its target affiliates (whether by treating all of them as stock purchases or as asset purchases) may not be circumvented through the use of any provision of law or regulations (including the consolidated return regulations).]

(i) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section including—

(1) regulations to ensure that the purposes of this section to require consistency of treatment of stock and asset purchases with respect to a target corporation and its target affiliates (whether by treating all of them as stock purchases or as asset purchases) may not be circumvented through the use of any provision of law or regulations (including the consolidated return regulations), and

(2) regulations providing for the coordination of the provisions of this section with the provisions of this title relating to foreign corporations and their shareholders.

PART II—CORPORATE LIQUIDATIONS

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Subpart C—Collapsible Corporations

Sec. 341. Collapsible corporations.

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SEC. 341. COLLAPSIBLE CORPORATIONS.

(a) TREATMENT OF GAIN TO SHAREHOLDERS.—* * *

(b) DEFINITIONS.—

(1) COLLAPSIBLE CORPORATION.—For purposes of this section, the term "collapsible corporation" means a corporation formed or availed of principally for the manufacture, construction, or production of property, for the purchase of property which (in the hands of the corporation) is property described in paragraph (3), or for the holding of stock in a corporation so formed or availed of, with a view to—

(A) the sale or exchange of stock by its shareholders (whether in liquidation or otherwise), or a distribution to its shareholders, before the realization by the corporation manufacturing, constructing, producing, or purchasing the property of a substantial part of the taxable income to be derived from such property, and

(B) the realization by such shareholders of gain attributable to such property.

For purposes of the preceding sentence, in the case of any condominium property resulting from the conversion of existing structures, the term "substantial part" means two-thirds.

* * * * * * *

(d) LIMITATIONS ON APPLICATION OF SECTION.—In the case of gain realized by a shareholder with respect to his stock in a collapsible corporation, this section shall not apply—

(1) unless, at any time after the commencement of the manufacture, construction, or production of the property or at the time of the purchase of the property described in subsection (b)(3) or at any time thereafter, such shareholder (A) owned (or was considered as owning) more than 5 percent in value of the outstanding stock of the corporation, or (B) owned stock which was considered as owned at such time by another shareholder who then owned (or was considered as owning) more than 5 percent in value of the outstanding stock of the corporation;

(2) to the gain recognized during a taxable year, unless more than 70 percent of such gain is attributable to the property so manufactured, constructed, produced, or purchased; and

(3) to gain realized after the expiration of 3 years following the completion of such manufacture, construction, production, or purchase.

For purposes of paragraph (1), the ownership of stock shall be determined in accordance with the rules prescribed in paragraphs (1), (2), (3), (5), and (6) of section 544(a) (relating to personal holding companies); except that, in addition to the persons prescribed by paragraph (2) of that section, the family of an individual shall include the spouses of that individual's brothers and sisters (whether by the whole or half blood) and the spouses of that individual's lineal descendants. *If the collapsible corporation holds any condominium property resulting from the conversion of existing structures, subsection (d)(2) shall not apply unless at least two-thirds of the taxable income to be derived from such property has been realized by the corporation before the sale or other disposition of the stock by the shareholder.*

(e) EXCEPTIONS TO APPLICATION OF SECTION.—

(1) SALES OR EXCHANGES OF STOCK—* * *

* * * * * * *

(12) NONAPPLICATION OF SECTION 1245(a).—For purposes of this subsection, the determination of whether gain from the sale or exchange of property would under any provision of this chapter be considered as ordinary income shall be made without regard to the application of sections 617(d)(1), 1245(a), 1250(a), [1251(c)], 1252(a), and 1254(a).

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PART III—CORPORATE ORGANIZATIONS AND REORGANIZATIONS

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Subpart D—Special Rule; Definitions

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SEC. 368. DEFINITIONS RELATING TO CORPORATE REORGANIZATIONS.

(a) REORGANIZATION.—

(1) IN GENERAL.—For purposes of parts I and II and this part, the term "reorganization" means—

(A) a statutory merger or consolidation;

(B) the acquisition by one corporation, in exchange solely for all or a part of its voting stock (or in exchange solely for all or a part of the voting stock of a corporation which is in control of the acquiring corporation), of stock of another corporation if, immediately after the acquisition, the acquiring corporation has control of such other corporation (whether or not such acquiring corporation had control immediately before the acquisition);

(C) the acquisition by one corporation, in exchange solely for all or a part of its voting stock (or in exchange solely for all or a part of the voting stock of a corporation which is in control of the acquiring corporation, of substantially all of the properties of another corporation, but in determining whether the exchange is solely for stock the assumption by the adquiring corporation of a liability of the other, or the fact that property acquired is subject to a liability, shall be disregarded;

(D) a transfer by a corporation of all or a part of its assets to another corporation if immediately after the transfer the transferor, or one or more of its shareholders (including persons who were shareholders immediately before the transfer), or any combination thereof, is in control of the corporation to which the assets are transferred; but only if, in pursuance of the plan, stock or securities of the corporation to which the assets are tranferred are distributed in a transaction which qualifies under section 354, 355, or 356;

(E) a recapitalization;

(F) a mere change in identity, form, or place of organization of one corporation, however effected; or

(G) a transfer by a corporation of all or part of its assets to another corporation in a title II or similar case; but only if, in pursuance of the plan, stock or securities of the corporation to which the assets are tranferred are distributed in a transaction which qualifies under section 354, 355, or 356.

(2) SPECIAL RULES RELATING TO PARAGRAPH (1).—

(A) REORGANIZATIONS DESCRIBED IN BOTH PARAGRAPH (1)(C) AND PARAGRAPH (1)(D).—if a transaction is described in both paragraph (1)(C) and paragraph (1)(D), then, for purposes of this subchapter, such transaction shall be treated as described only in paragraph (1)(D).

(B) ADDITIONAL CONSIDERATION IN CERTAIN PARAGRAPH (1)(C) CASES.—If—

(i) one corporation acquires substantially all of the properties of another corporation,

(ii) the acquisition would qualify under paragraph (1)(C) but for the fact that the acquiring corporation exchanges money or other property in addition to voting stock, and

(iii) the acquiring corporation acquires, solely for voting stock described in paragraph (1)(C), property of the other corporation having a fair market value which is at least 80 percent of the fair market value of all of the property of the other corporation,

then such acquisition shall (subject to subparagraph (A) of this paragraph) be treated as qualifying under paragraph (1)(C). Solely for the purpose of determining whether clause (iii) of the preceding sentence applies, the amount of any liability assumed by the acquiring corporation, and the amount of any liability to which any property acquired by the acquiring corporation is subject, shall be treated as money paid for the property.

(C) TRANSFERS OF ASSETS OR STOCK TO SUBSIDIARIES IN CERTAIN PARAGRAPH (1)(A), (1)(B), (1)(C), AND (1)(G) CASES.—A transaction otherwise qualifying under paragraph (1)(A), (1)(B), or (1)(C) shall not be disqualified by reason of the fact that part or all of the assets or stock which were acquired in the transaction are transferred to a corporation controlled by the corporation acquiring such assets or stock. A similar rule shall apply to a transaction otherwise qualifying under paragraph (1)(G) where the requirements of subparagraphs (A) and (B) of section 354(b)(1) are met with respect to the acquisition of the assets.

(D) USE OF STOCK OF CONTROLLING CORPORATION IN PARAGRAPH (1)(A) AND (1)(G) CASES.—The acquisition by one corporation, in exchange for stock of a corporation (referred to in this subparagraph as "controlling corporation") which is in control of the acquiring corporation, of substantially all of the properties of another corporation shall not disqualify a transaction under paragraph (1)(A) or (1)(G) if—

(i) no stock of the acquiring corporation is used in the transaction, and

(ii) in the case of a transaction under paragraph (1)(A), such transaction would have qualified under paragraph (1)(A) had the merger been into the controlling corporation.

(E) STATUTORY MERGER USING VOTING STOCK OF CORPORATION CONTROLLING MERGED CORPORATION.—A transaction otherwise qualifying under paragraph (1)(A) shall not be disqualified by reason of the fact that stock of a corporation (referred to in this subparagraph as the "controlling corporation") which before the merger was in control of the merged corporation is used in the transaction, if—

(i) after the transaction, the corporation surviving the merger holds substantially all of its properties and of the properties of the merged corporation (other than stock of the controlling corporation distributed in the transaction); and

(ii) in the transaction, former shareholders of the surviving corporation exchanged, for an amount of voting stock of the controlling corportion, an amount of stock in the surviving corporation which constitutes control of such corporation.

(F) CERTAIN TRANSACTIONS INVOLVING 2 OR MORE INVESTMENT COMPANIES.—

(i) If immediately before a transaction described in paragraph (1) (other than subparagraph (E) thereof), 2 or more parties to the transaction were investment companies, then the transaction shall not be considered to be a reorganization with respect to any such investment company (and its shareholders and security holders) unless it was a regulated investment company, a real estate investment trust, or a corporation which meets the requirements of clause (ii).

(ii) A corporation meets the requirements of this clause if not more than 25 percent of the value of its total assets is invested in the stock and securities of any one issuer, and not more than 50 percent of the value of its total assets is invested in the stock and securities of 5 or fewer issuers. For purposes of this clause, all member of a controlled group of corporations (within the meaning of section 1563(a)) shall be treated as one issuer.

(iii) For purposes of this subparagraph the term "investment company" means a regulated investment company, a real estate investment trust, or a corporation 50 percent or more of the value of whose total assets are stock and securities and 80 percent or more of the value of whose total assets are assets held for investment. In making the 50-percent and 80-percent determinations under the preceding sentence, stock and securities in any subsidiary corporation shall be disregarded and the parent corporation shall be deemed to own its ratable share of the subsidiary's assets, and a corporation shall be considered a subsidiary if the parent owns 50 percent or more of the combined voting power of all classes of stock entitled to vote, or 50 percent or more of the total value of shares of all classes of stock outstanding.

(iv) For purposes of this subparagraph, in determining total assets there shall be excluded cash and cash items (including receivables), Government securities, and, under regulations prescribed by the Secretary, assets acquired (through incurring indebtedness or otherwise) for purposes of meeting the requirements of clause (ii) or ceasing to be an investment company.

(v) This subpargraph shall not apply if the stock of each investment company is owned substantially by the same persons in the same proportions.

(vi) If an investment company which does not meet the requirements of clause (ii) acquires assets of another corporation, clause (i) shall be applied to such investment company and its shareholders and security holders as though its assets had been acquired by such other corporation. If such investment company acquires stock of another corporation in a reorganization described in section 368(a)(1)(B), clause (i) shall be applied to the shareholders of such investment company as though they had exchanged with such other corporation all of their stock in such company for stock having a fair market value equal to the fair market value of their stock of such investment company immediately after the exchange. For purposes of section 1001, the deemed acquisition or exchange referred to in the two preceding sentences shall be treated as a sale or exchange of property by the corporation and by the shareholders and security holders to which clause (i) is applied.

(vii) For purposes of clauses (ii) and (iii), the term "securities" includes obligations of State and local governments, commodity futures contracts, shares of regulated investment companies and real estate investment trusts, and other investments constituting a security within the meaning of the Investment Company Act of 1940 (15 U.S.C. 80a-2(36)).

[(viii) In applying paragraph (3) of section 267(b) in respect of any transaction to which this subparagraph applies, the reference to a pesonal holding company in such paragraph (3) shall be treated as including a reference to an investment company and the determination of whether a corporation is an investment company shall be made as of the time immediately before the transaction instead of with respect to the taxable year referred to in such paragraph (3).]

PART V—CARRYOVERS

Sec. 381. Carryovers in certain corporate acquisitions.
Sec. 382. Special limitations on net operating loss carryovers.
[Sec. 383. Special limitations on carryovers of unused investment credits, work incentive program credits, new employee credits, alcohol fuel credits, research credits, employee stock ownership credits, foreign taxes, and capital losses.]
Sec. 383. Special limitations on unused business credits, research credits, foreign taxes, and capital losses.

SEC. 381. CARRYOVERS IN CERTAIN CORPORATE ACQUISITIONS.

(a) GENERAL RULE.—* * *

* * * * * * *

(c) ITEMS OF THE DISTRIBUTOR OR TRANSFEROR CORPORATION.—The items referred to it subsection (a) are:

(1) NET OPERATING LOSS CARRYOVERS.— * * *

* * * * * * *

[(23) CREDIT UNDER SECTION 38 FOR INVESTMENT IN CERTAIN DEPRECIABLE PROPERTY.—The acquiring corporation shall take into account (to the extent proper to carry out the purposes of this section and section 38, and under such regulations as may be prescribed by the Secretary) the items required to be taken into account for purposes of section 38 in respect of the distributor or transferor corporation.

[(24) CREDIT UNDER SECTION 40 FOR WORK INCENTIVE PROGRAM EXPENSES.—The acquiring corporation shall take into account (to the extent proper to carry out the purposes of this section and section 40, and under such regulations as may be prescribed by the Secretary) the items required to be taken into account for purposes of section 40 in respect of the distributor or transferor corporation.]

[(25)] *(23)* DEFICIENCY DIVIDEND OF REGULATED INVESTMENT COMPANY OR REAL ESTATE INVESTMENT TRUST.—If the acquiring corporation pays a deficiency dividend (as defined in section 860(f)) with respect to the distributor or transferor corporation, such distributor or transferor corporation shall, with respect to such payments, be entitled to the deficiency dividend deduction provided in section 860.

[(26) CREDIT UNDER SECTION 44B FOR EMPLOYMENT OF CERTAIN NEW EMPLOYEES.—The acquiring corporation shall take into account (to the extent proper to carry out the purposes of this section and section 44B, and under such regulations as may be prescribed by the Secretary) the items required to be taken into account for purposes of section 44B in respect of the distributor or transferor corporation.

[(27) CREDIT UNDER SECTION 44E FOR ALCOHOL USED AS FUEL.—The acquiring corporation shall take into account (to the extent proper to carry out the purposes of this section and section 44E, and under such regulations as may be prescribed by the Secretary) the items required to be taken into account for purposes of section 44E in respect of the distributor or transferor corporation.]

[(28)] *(24)* METHOD OF COMPUTING RECOVERY ALLOWANCE FOR RECOVERY PROPERTY.—The acquiring corporation shall be treated as the distributor or transferor corporation for purposes of computing the deduction allowable under section 168(a) on property acquired in a distribution or tranfer with respect to so much of the basis in the hands of the acquiring corporation as does not exceed the adjusted basis in the hands of the distributor or transferor corporation.

[(29)] *(25)* CREDIT UNDER SECTION [44F] *30*.—The acquiring corporation shall take into account (to the extent proper to carry out the purposes of this section [44F] *30*, and under such regulations as may be prescribed by the Secretary) the items required to be taken into account for purposes of section [44F] *30*, in respect of the distributor or transferor corporation.

[(30) CREDIT UNDER SECTION [illegible]he acquiring corporation shall take into account (to the extent proper to carry out the purposes of this section and section 44G, and under such regulations as may be prescribed by the Secretary) the items required to be taken into account for purposes of section 44G in respect of the distributor or transferor corporation.]

(26) CREDIT UNDER SECTION 38.—The acquiring corporation shall take into account (to the extent proper to carry out the purposes of this section and section 38, and under such regulations as may be prescribed by the Secretary) the items required to be taken into account for purposes of section 38 in respect of the distributor or transferor corporation.

* * * * * * *

(d) OPERATIONS LOSS CARRYBACKS AND CARRYOVERS OF LIFE INSURANCE COMPANIES.—

For application of this part to operations loss carrybacks and carryovers of life insurance companies, see section [812(f)] *810.*

* * * * * * *

[Sec. 383 as in effect before amendment by the Tax Reform Act of 1976 (P.L. 94-455)]

SEC. 383. SPECIAL LIMITATIONS [ON CARRYOVERS OF UNUSED INVESTMENT CREDITS, WORK INCENTIVE PROGRAM CREDITS, NEW EMPLOYEE CREDITS, ALCOHOL FUEL CREDITS, RESEARCH CREDITS, EMPLOYEE STOCK OWNERSHIP CREDITS, FOREIGN TAXES, AND CAPITAL LOSSES.] *ON UNUSED BUSINESS CREDITS, RESEARCH CREDITS, FOREIGN TAXES, AND CAPITAL LOSSES.*

If—

(1) the ownership and business of a corporation are changed in the manner described in section 382(a)(1), or

(2) in the case of a reorganization specified in paragraph (2) of section 381(a), there is a change in ownership described in section 382(b)(1)(B), then the limitations provided in section 382 in such cases with respect to the carryover of net operating losses shall apply in the same manner, as provided under regulations prescribed by the Secretary or his delegate, [with respect to any unused investment credit of the corporation which can otherwise be carried forward under section 46(b), to any unused work incentive program credit of the corporation which can otherwise be carried forward under section 50A(b), to any unused new employee credit of the corporation which could otherwise be carried forward under section 53(b), to any unused credit of the corporation which could otherwise be carried forward under section 44E(e)(2), to any used credit of the corporation which could otherwise be carried forward under section 44F(g)(2), to any unused credit of the corporation which could otherwise be carried forward under section 44G(b)(2), to any excess foreign taxes of the corporation which can otherwise be carried forward under section 904(d), and to any net capital loss of the corporation which can otherwise be carried forward under section 1212.] *with respect to any unused business credit of the corporation which can otherwise be carried*

forward under section 39, to any unused credit of the corporation which could otherwise be carried forward under section 30(g)(2), to any excess foreign taxes of the corporation which could otherwise be carried forward under section 904(d), and to any net capital loss of the corporation which can otherwise be carried forward under section 1212.

[Sec. 383 as amended by the Tax Reform Act of 1976 (94-455)]

SEC. 383. SPECIAL LIMITATIONS ON UNUSED [INVESTMENT CREDITS, WORK INCENTIVE PROGRAM CREDITS, NEW EMPLOYEE CREDITS, ALCOHOL FUEL CREDITS, RESEARCH CREDITS, EMPLOYEE STOCK OWNERSHIP CREDITS,] ***BUSINESS CREDITS, RESEARCH CREDITS,*** **FOREIGN TAXES, AND CAPITAL LOSSES.**

In the case of a change of ownership of a corporation in the manner described in section 382(a) or (b), the limitations provided in section 382 in such cases with respect to net operating losses shall apply in the same manner, as provided under regulations prescribed by the Secretary, [with respect to any unused investment credit of the corporation under section 46(b), to any unused work incentive program credit of the corporation under section 50A(b), to any unused new employee credit of the corporation under section 53(b), to any unused credit of the corporation under section 44E(e)(2), to any unused credit of the corporation under section 44F(g)(2), to any unused credit of the corporation under section 44G(b)(2), to any excess foreign taxes of the corporation under section 904(c), and to any net capital loss of the corporation under section 1212.] *with respect to any unused business credit of the corporation under section 39, to any unused credit of the corporation under section 30(g)(2), to any excess foreign taxes of the corporation under section 904(c), and to any net capital loss of the corporation under section 1212.*

* * * * * * *

Subchapter D—Deferred Compensation, Etc.

Part I. Pension, profit-sharing, stock bonus plans, etc.
Part II. Certain stock options.

PART I—PENSION, PROFIT-SHARING, STOCK BONUS PLANS, ETC.

Subpart A—General Rule

Sec. 401. Qualified pension, profit-sharing, and stock bonus plans.
Sec. 402. Taxability of beneficiary of employees' trust.
Sec. 403. Taxation of employee annuities.
Sec. 404. Deduction for contributions of an employer to an employees' trust or annuity plan and compensation under a deferred-payment plan.
Sec. 404A. Deduction for certain foreign deferred compensation plans.
[Sec. 405. Qualified bond purchase plans.]
Sec. 406. Employees of foreign affiliates covered by section 3121(1) agreements.
Sec. 407. Certain employees of domestic subsidiaries engaged in business outside the United States.
Sec. 408. Individual retirement accounts.
[Sec. 409. Retirement bonds.]
Sec. 409[A]. Qualifications for tax credit employee stock ownership plans.

SEC. 401. QUALIFIED PENSION, PROFIT-SHARING, AND STOCK BONUS PLANS.

(a) REQUIREMENTS FOR QUALIFICATION.—A trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of his employees or their beneficiaries shall constitute a qualified trust under this section—

(1) * * *

* * * * * * *

(9) REQUIRED DISTRIBUTIONS.—

(A) BEFORE DEATH.—A trust forming part of a plan shall not constitute a qualified trust under this section unless the plan provides that the entire interest of each employee—

[(i) either will be distributed to him not later than his taxable year in which he attains age 70½ or, in the case of an employee other than a key employee who is a participant in a top-heavy plan, in which he retires, whichever is the later, or]

(i) either will be distributed to him not later than the later of—

(I) his taxable year in which he attains age 70½, or

(II) his taxable year in which he retires, or

(ii) will be distributed *to the employee or any of his beneficiaries,* commencing not later than such taxable year—

(I) in accordance with regulations prescribed by the Secretary, over the life of such employee or over the lives of such employee and his spouse, or

(II) in accordance with such regulations, over a period not extending beyond the life expectancy of such employee or the life expectancy of such employee and his spouse.

Subclause (II) of clause (i) shall not apply with respect to any employee who was a key employee (as defined in section 416) in a top-heavy plan (as defined in section 416) for the plan year ending in the taxable year in which he attains age 70½.

(B) AFTER DEATH.—A trust forming part of a plan shall not constitute a qualified trust under this section unless the plan provides that if—

(i) an employee dies before his entire interest has been distributed to him, or

(ii) distribution has been commenced in accordance with subparagraph (A)(ii) to his surviving spouse and such surviving spouse dies before his entire interest has been distributed to such surviving spouse,

his entire interest (or the remaining part of such interest if distribution thereof has commenced) will be distributed within 5 years after his death (or the death of his surviving spouse). The preceding sentence shall not apply if the distribution of the interest of the employee has commenced and such distribution is for a term certain over a period permitted under subparagraph (A)(ii)(II).

(C) EXCEPTION WHERE DISTRIBUTIONS MADE TO CERTAIN DEPENDENTS OR FORMER SPOUSE.—Subparagraph (B) shall not apply if the entire interest of the employee (or the remaining part of such interest if distribution thereof has commenced) will be distributed (beginning not later than 1 year after the employee's death or the death of his surviving spouse)—

(i) to a qualified beneficiary, and

(ii) in accordance with regulations prescribed by the Secretary, over a qualified period.

(D) QUALIFIED BENEFICIARY DEFINED.—For purposes of subparagraph (C), the term "qualified beneficiary" means—

(i) any qualified dependent, and

(ii) a former spouse of the employee.

(E) QUALIFIED DEPENDENT.—For purposes of this paragraph—

(i) IN GENERAL.—The term "qualified dependent" means any individual who was a dependent (as defined in section 152) of the employee (or his surviving spouse) for any 2 of the last 5 taxable years of the employee (or his surviving spouse).

(ii) SPECIAL RULE FOR CHILD OF DIVORCED PARENTS, ETC.—Any child to whom section 152(e) applies for any taxable year shall be treated as the dependent of both parents.

(iii) SOCIAL SECURITY BENEFITS DISREGARDED.—Benefits under title II of the Social Security Act received by (or on behalf of) an individual shall not be taken into account for purposes of determining whether such individual is the dependent of another taxpayer.

(F) QUALIFIED PERIOD.—For purposes of this paragraph—

(i) IN GENERAL.—The qualified period with respect to any qualified beneficiary shall end at the later of—

(I) the life expectancy of an individual with an age equal to the age of the employee at his death (or the age of the surviving spouse), or

(II) 5 years after the date of the employee's death (or the death of the surviving spouse).

(ii) SPECIAL RULE FOR PERMANENTLY AND TOTALLY DISABLED INDIVIDUALS.—In accordance with regulations, the qualified period for any individual who was permanently and totally disabled at the death of the employee (or who thereafter becomes permanently and totally disabled) shall be the life of such individual or a term certain not extending beyond the life expectancy of such individual.

(G) SPECIAL RULES FOR MINORS.—For purposes of this paragraph, in the case of an individual who has not attained age 22 at the time of the employee's death—

(i) the distributions are not required to begin before the individual attains age 22, and

(ii) the qualified period shall in no case end before such individual attains age 27.

* * * * * * *

(21) A trust forming part of a tax credit employee stock ownership plan shall not fail to be considered a permanent program merely because employer contributions under the plan are determined solely by reference to the amount of credit which would be [allowable—

[(A) under section 46(a) if the employer made the transfer described in section 48(n)(1), or

[(B) under section 44G if the employer made the transfer described in section 44G(c)(1)(B).] *allowable under section 41 if the employer made the transfer described in section 41(c)(1)(B).*

(22) if a defined contribution plan (other than a profit-sharing plan)—

(A) is established by an employer whose stock is not publicly traded, and

(B) after acquiring securities of the employer, more than 10 percent of the total assets of the plan are securities of the employer,

any trust forming part of such plan shall not constitute a qualified trust under this section unless the plan meets the requirements of subsection (e) of section [409A.] *409.*

(23) A stock bonus plan which otherwise meets the requirements of this section shall not be considered to fail to meet the requirements of this section because it provides a cash distribution option to participants if that option meets the requirements of section [409A(h)] *409(h),* except that in applying section [409A(h)] *409(h)* for purposes of this paragraph, the term "employer securities" shall include any securities of the employer held by the plan.

(24) Any group trust which otherwise meets the requirements of this section shall not be treated as not meeting such requirements on account of the participation or inclusion in such trust of the moneys of any plan or governmental unit described in section [805(d)(6).] *818(a)(6).*

Paragraphs (11), (12), (13), (14), (15), (19), and (20) shall apply only in the case of a plan to which section 411 (relating to minimum vesting standards) applies without regard to subsection (e)(2) of such section.

* * * * * * *

[(e) CONTRIBUTIONS FOR PREMIUMS ON ANNUITY, ETC., CONTRACTS.—A contribution by the employer on behalf of an owner-employee is described in this subsection if—

[(1) under the plan such contribution is required to be applied (directly or through a trustee) to pay premiums or other consideration for one or more annuity, endowment, or life insurance contracts on the life of such owner-employee issued under the plan,

[(2) the amount of such contribution exceeds the amount deductible the amount under section 404 with respect to contributions made by the employer on behalf of such owner-employee under the plan, and

[(3) the amount of such contribution does not exceed the average of the amounts which were deductible under section 404 with respect to contributions made by the employer on behalf of such owner-employee under the plan (or which would have been deductible if such section had been in effect) for the first three taxable years (A) preceding the year in which the last such annuity, endowment, or life insurance contract was issued under the plan, and (B) in which such owner-employee derived earned income from the trade or business with respect to which the plan is established, or for so many of such taxable years as such owner-employee was engaged in such trade or business and derived earned income therefrom.

In the case of any individual on whose behalf contributions described in paragraph (1) are made under more than one plan as an owner-employee during any taxable year, the preceding sentence does not apply if the amount of such contributions under all such plans for all such years exceeds $15,000. Any contribution which is described in this subsection shall, for purposes of section 4972(b), be taken into account as a contribution made by such owner-employee as an employee to the extent that the amount of such contribution is not deductible under section 404 for the taxable year, but only for the purpose of applying section 4972(b) to other contributions made by such owner-employee as an employee.]

(f) Certain Custodial Accounts and Contracts.—For purposes of this title, a custodial account, an annuity contract, or a contract (other than a life, health or accident, property, casualty, or liability insurance contract) issued by an insurance company qualified to do business in a State shall be treated as a qualified trust under this section if—

(1) the custodial account or contract would, except for the fact that it is not a trust, constitute a qualified trust under this section, and

(2) in the case of a custodial account the assets thereof are held by a bank (as defined in [subsection (d)(1)] *section 408(n))* or another person who demonstrates, to the satisfaction of the Secretary, that the manner in which he will hold the assets will be consistent with the requirements of this section.

For purposes of this title, in the case of a custodial account or contract treated as a qualified trust under this section by reason of this subsection, the person holding the assets of such account or holding such contract shall be treated as the trustee thereof.

* * * * * * *

(k) Cash or Deferred Arrangements.—

(1) General rule.—A profit-sharing or stock bonus plan *(or a pre-ERISA money purchase plan)* shall not be considered as not satisfying the requirements of subsection (a) merely because the plan includes a qualified cash or deferred arrangement.

(2) Qualified cash or deferred arrangement.—A qualified cash or deferred arrangement is any arrangement which is part of a profit-sharing or stock bonus plan (or a pre-ERISA

money purchase plan) which meets the requirements of subsection (a)—

(A) under which a covered employee may elect to have the employer make payments as contributions to a trust under the plan on behalf of the employee, or to the employee directly in cash;

(B) under which amounts held by the trust which are attributable to employer contributions made pursuant to the employee's election may not be distributable to participants or other beneficiaries earlier than upon retirement, death, disability, or separation from service [, hardship or the attainment of age 59½,] *(or in the case of a profit sharing or stock bonus plan, hardship or the attainment of age 59½)* and will not be distributable merely by reason of the completion of a stated period of participation or the lapse of a fixed number of years; and

(C) which provides that an employee's right to his accrued benefit derived from employer contributions made to the trust pursuant to his election are [is] nonforfeitable.

* * * * * * *

(5) Pre-ERISA money purchase plan.—For purposes of this subsection, the term "pre-ERISA money purchase plan" means a pension plan—

(A) which is a defined contribution plan (as defined in section 414(i)),

(B) which was in existence on June 27, 1974, and which, on that date, included a salary reduction arrangement, and

(C) under which neither the employee contributions nor the employer contributions may exceed the levels provided for by the contribution formula in effect under the plan on that date.

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SEC. 402. TAXABILITY OF BENEFICIARY OF EMPLOYEES' TRUST.

(a) Taxability of Beneficiary of Exempt Trust.—

(1) General rule.—Except as provided in paragraphs (2) and (4), the amount actually distributed to any distributee by any employees' trust described in section 401(a) which is exempt from tax under section 501(a) shall be taxable to him, in the year in which so distributed, under section 72 (relating to annuities). The amount actually distributed to any distributee shall not include net unrealized appreciation in securities of the employer corporation attributable to the amount contributed by the employee (other than deductible employee contributions within the meaning of section 72(o)(5)). Such net unrealized appreciation and the resulting adjustments to basis of such securities shall be determined in accordance with regulations prescribed by the Secretary.

(2) Capital gains treatment for portion of lump sum distribution.—In the case of an employee trust described in section 401(a), which is exempt from tax under section 501(a), so much of the total taxable amount (as defined in subparagraph (D) of subsection (e)(4)) of a lump sum distribution as is equal

to the product of such total taxable amount multiplied by a fraction—

(A) the numerator of which is the number of calendar years of active participation by the employee in such plan before January 1, 1974, and

(B) the denominator of which is the number of calendar years of active participation by the employee in such plan,

shall be treated as a gain from the sale or exchange of a capital asset held for more than 6 months. For purposes of computing the fraction described in this paragraph and the fraction under subsection (e)(4)(E), the Secretary may prescribe regulations under which plan years may be used in lieu of calendar years. For purposes of this paragraph, in the case of an individual who is an employee without regard to section 401(c)(1), determination of whether or not any distribution is a lump sum distribution shall be made without regard to the requirement that an election be made under subsection (e)(4)(B), but no distribution to any taxpayer other than an individual, estate, or trust may be treated as a lump sum distribution under this paragraph.

(3) DEFINITIONS.—For purposes of this subsection—

(A) The term "securities" means only shares of stock and bonds or debentures issued by a corporation with interest coupons or in registered form.

(B) The term "securities of the employer corporation" includes securities of a parent or subsidiary corporation (as defined in subsections (e) and (f) of section 425) of the employer corporation.

(4) DISTRIBUTIONS BY UNITED STATES TO NONRESIDENT ALIENS.—The amount includible under paragraph (1) and (2) of this subsection in the gross income of a nonresident alien individual with respect to a distribution made by the United States in respect of services performed by an employee of the United States shall not exceed an amount which bears the same ratio to the amount includible in gross income without regard to this paragraph as—

(A) the aggregate basic pay paid by the United States to such employee for such services, reduced by the amount of such basic pay which was not includible in gross income by reason of being from sources without the United States, bears to

(B) the aggregate basic pay paid by the United States to such employee for such services.

In the case of distributions under the civil service retirement laws, the term "basic pay" shall have the meaning provided in section 8331(3) of title 5, United States Code.

(5) ROLLOVER AMOUNTS.—

(A) GENERAL RULE.—If—

[(i) the balance to the credit of an employee in a qualified trust is paid to him in a qualifying rollover distribution,]

(i) any portion of the balance to the credit of an employee in a qualified trust is paid to him,

(ii) the employee transfers any portion of the property he receives in such distribution to an eligible retirement plan, and

(iii) in the case of a distribution of property other than money, the amount so transferred consists of the property distributed,

then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

(B) MAXIMUM AMOUNT WHICH MAY BE ROLLED OVER.—In the case of any [qualifying rollover] *qualified total* distribution, the maximum amount transferred to which subparagraph (A) applies shall not exceed the fair market value of all the property the employee receives in the distribution, reduced by the employee contributions (other than accumulated deductible employee contributions within the meaning of section 72(o)(5)). *In the case of any partial distribution, the maximum amount transferred to which subparagraph (A) applies shall not exceed the portion of such distribution which is includible in gross income (determined without regard to subparagraph (A)).*

(C) TRANSFER MUST BE MADE WITHIN 60 DAYS OF RECEIPT.—Subparagraph (A) shall not apply to any transfer of a distribution made after the 60th day following the day on which the employee received the property distributed.

(E) SPECIAL RULES FOR PARTIAL DISTRIBUTIONS.—

(i) REQUIREMENTS.—Subparagraph (A) shall apply to partial distribution only if—

(I) such distribution is of an amount equal to at least 50 percent of the balance to the credit of the employee in a qualified trust (determined immediately before such distribution and with regard to subsection (e)(4)(C)),

(II) such distribution is not one of a series of periodic payments, and

(III) the employee elects (at such time and in such manner as the Secretary shall by regulation prescribe) to have subparagraph (A) apply to such partial distribution.

(ii) PARTIAL DISTRIBUTIONS MAY BE TRANSFERRED ONLY TO INDIVIDUAL RETIREMENT PLANS.—In the case of a partial distribution, a plan described in subclause (IV) or (V) of subparagraph (E)(iv) shall not be treated as an eligible retirement plan.

(iii) DENIAL OF 10-YEAR AVERAGING AND CAPITAL GAINS TREATMENT FOR SUBSEQUENT DISTRIBUTIONS.—If an election under clause (i) is made with respect to any partial distribution paid to any employee—

(I) paragraph (2) of this subsection,

(II) paragraphs (1) and (3) of subsection (e), and

(III) paragraph (2) of section 403(a),

shall not apply to any distribution (paid after such partial distribution) of the balance to the credit of such employee under the plan under which such partial dis-

tribution was made (or under any other plan which, under subsection (e)(4)(C), would be aggregated with such plan).

(iv) SPECIAL RULE FOR UNREALIZED APPRECIATION.—If an election under clause (i) is made with respect to any partial distribution, the second and third sentences of paragraph (1) shall not apply to such distribution.

[(D)**]** *(E)* DEFINITIONS.—For purposes of this paragraph—

(i) QUALIFYING ROLLOVER DISTRIBUTION.—The term "**[**qualifying rollover**]** *qualified total* distribution means 1 or more distributions—

(I) within 1 taxable year of the employee on account of a termination of the plan of which the trust is a part or, in the case of a profit-sharing or stock bonus plan, a complete discontinuance of contributions under such plan,

(II) which constitute a lump sum distribution within the meaning of subsection (e)(4)(A) (determined without reference to subparagraphs (B) and (H) of subsection (e)(4)), or

(III) which constitute a distribution of accumulated deductible employee contributions (within the meaning of section 72(o)(5)).

(ii) EMPLOYEE CONTRIBUTIONS.—The term "employee contributions" means—

(I) the excess of the amounts considered contributed by the employee (determined by applying section 72(f)), over

(II) any amounts theretofore distributed to the employee which were not includible in gross income *(determined without regard to this paragraph).*

(iii) QUALIFIED TRUST.—The term "qualified trust" means an employees' trust described in section 401(a) which is exempt from tax under section 501(a).

(iv) ELIGIBLE RETIREMENT PLAN.—The term "eligible retirement plan" means—

(I) an individual retirement account described in section 408(a),

(II) an individual retirement annuity described in section 408(b) (other than an endowment contract),

[(III) a retirement bond described in section 409,**]**

[(IV)**]** *(III)* a qualified trust, and

[(V)**]** *(IV)* an annuity plan described in section 403(a).

[(v) ROLLOVER OF PARTIAL DISTRIBUTIONS OF DEDUCTIBLE EMPLOYEE CONTRIBUTIONS PERMITTED.—In the case of any qualifying rollover distribution described in subclause (III) of clause (i), clause (i) of subparagraph (A) shall be applied by substituting "any portion of the balance" for "the balance".**]**

(v) PARTIAL DISTRIBUTION.—The term "partial distribution" means any distribution to an employee of any

portion of the balance to the credit of such employee in a qualified trust; except that such term shall not include any distribution which is a qualified total distribution.

[(E)] *(F) SPECIAL RULES.—*

(i) TRANSFER TREATED AS ROLLOVER CONTRIBUTION UNDER SECTION 408.—For purposes of this title, a transfer described in subparagraph (A) to an eligible retirement plan described in subclause (I)[, (II), or (III)] *or (II)* of subparagraph [(D)(iv)] *(E)(iv)* shall be treated as a rollover contribution described in section 408(d)(3).

[(ii) SELF-EMPLOYED INDIVIDUALS AND OWNER-EMPLOYEES.—An eligible retirement plan described in subclause (IV) or (V) of subparagraph (D)(iv) shall not be treated as an eligible retirement plan for the transfer of a distribution if any part of the distribution is attributable to a trust forming part of a plan under which the employee was an employee within the meaning of section 401(c)(1) at the time contributions were made on his behalf under the plan.]

(ii) KEY EMPLOYEES.—An eligible retirement plan described in subclause (III) or (IV) of subparagraph (D)(iv) shall not be treated as an eligible retirement plan for the transfer of a distribution if any part of the distribution is attributable to contributions made on behalf of the employee while he was a key employee in a top-heavy plan. For purposes of the preceding sentence, the terms "key employee" and "top-heavy plan" have the same respective meanings as when used in section 416.

(6) SPECIAL ROLLOVER RULES.—

(A) TIME OF TERMINATION.—For purposes of paragraph [(5)(D)(i)] *(5)(E)(i),* a complete discontinuance of contributions under a profit-sharing or stock bonus plan shall be deemed to occur on the day the plan administrator notifies the Secretary (in accordance with regulations prescribed by the Secretary) that all contributions to the plan have been completely discontinued. For purposes of section 411(d)(3), the plan shall be considered to be terminated no later than the day such notice is filed with the Secretary.

(B) SALE OF SUBSIDIARY OR ASSETS.—For purposes of paragraph [(5)(D)(i)] *(5)(E)(i)—*

(i) A payment of the balance to the credit of an employee of a corporation (hereinafter referred to as the employer corporation) which is a subsidiary corporation (within the meaning of section 425(f)) or which is a member of a controlled group of corporations (within the meaning of section 1563(a), determined by substituting "50 percent" for "80 percent" each place it appears herein) in connection with the liquidation, sale, or other means of terminating the parent-subsidiary or controlled group relationship of the employer corporation with the parent corporation or controlled group, or

(ii) a payment of the balance to the credit of an employee of a corporation (hereinafter referred to as the acquiring corporation) in connection with the sale or other transfer to the acquiring corporation of all or substantially all of the assets used by the previous employer of the employee (hereinafter referred to as the selling corporation) in a trade or business conducted by the selling corporation

shall be treated as a payment or distribution on account of the termination of the plan with respect to such employee if the employees of the employer corporation or the acquiring corporation (whichever applies) are not active participants in such plan at the time of such payment or distribution. For purposes of this subparagraph, in no event shall a payment or distribution be deemed to be in connection with a sale or other transfer of assets, or a liquidation, sale, or other means of terminating such parent-subsidiary or controlled group relationship, if such payment or distribution is made later than the end of the second calendar year after the calendar year in which occurs such sale or other transfer of assets, or such liquidation, sale, or other means of terminating such parent-subsidiary or controlled group relationship.

(C) TREATMENT OF PORTION NOT ROLLED OVER.—If any portion of a lump sum distribution is transferred in a transfer to which paragraph (5)(A) applies, paragraph (2) of subsection (a), and paragraphs (1) and (3) of subsection (e) shall not apply with respect to such lump sum distribution.

(D) SALES OF DISTRIBUTED PROPERTY.—For purposes of subparagraphs (5) and (7)—

(i) TRANSFER OF PROCEEDS FROM SALE OF DISTRIBUTED PROPERTY TREATED AS TRANSFER OF DISTRIBUTED PROPERTY.—The transfer of an amount equal to any portion of the proceeds from the sale of property received in the distribution shall be treated as the transfer of property received in the distribution.

(ii) PROCEEDS ATTRIBUTABLE TO INCREASE IN VALUE.—The excess of fair market value of property on sale over its fair market value on distribution shall be treated as property received in the distribution.

(iii) DESIGNATION WHERE AMOUNT OF DISTRIBUTION EXCEEDS ROLLOVER CONTRIBUTION.—In any case where part or all of the distribution consists of property other than money, the taxpayer may designate—

(I) the portion of the money or other property which is to be treated as attributable to employee contributions *(or, in the case of a partial distribution, the amount not includible in gross income),* and

(II) the portion of the money or other property which is to be treated as included in the rollover contribution.

Any designation under this clause for a taxable year shall be made not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof). Any such designation, once, made, shall be irrevocable.

(iv) TREATMENT WHERE NO DESIGNATION.—In any case where part or all of the distribution consists of property other than money and the taxpayer fails to make a designation under clause (iii) within the time provided therein, then—

(I) the portion of the money or other property which is to be treated as attributable to employee contributions (or, in the case of a partial distribution, the amount not includible in gross income), and

(II) the portion of the money or other property which is to be treated as included in the rollover contribution shall be determined on a ratable basis.

(v) NONRECOGNITION OF GAIN OR LOSS.—In the case of any sale described in clause (i), to the extent that an amount equal to the proceeds is transferred pursuant to paragraph (5)(B) or (7)(B) (as the case may be), neither gain nor loss on such sale shall be recognized.

(E) SPECIAL RULE WHERE EMPLOYER MAINTAINS MONEY PURCHASE PENSION PLAN AND OTHER PENSION PLAN.—

(i) IN GENERAL.—In the case of any distribution from a money purchase pension plan which is maintained by an employer, for purposes of paragraph [(5)(D)(i)(II),] *(5)(E)(i)(II),* subsection (e)(4)(C) shall be applied by not taking into account any pension plan maintained by such employer which is not a money purchase pension plan. The preceding sentence shall not apply to any distribution which is a [qualifying rollover] *qualified total* distribution without regard to this subparagraph.

(ii) TREATMENT OF SUBSEQUENT DISTRIBUTIONS.—If—

(I) any distribution of the balance to the credit of an employee from a money purchase pension plan maintained by an employer is treated as a qualifying rollover distribution by reason of clause (i), and

(II) any portion of such distribution is transferred in a transfer to which paragraph (5)(A) applies,

then paragraph (2) of subsection (a), and paragraphs (1) and (3) of subsection (e), shall not apply to any distribution (after the taxable year in which the distribution described in subparagraph (A) of paragraph (5) is made) of the balance to the credit of such employee from any other pension plan maintained by such employer.

[(7) ROLLOVER WHERE SPOUSE RECEIVES LUMP-SUM DISTRIBUTION AT DEATH OF EMPLOYEE.—

[(A) GENERAL RULE.—If—

[(i) any portion of a qualifying rollover distribution attributable to an employee is paid to the spouse of the employee after the employee's death,

[(ii) the spouse transfers any portion of the property which the spouse receives in such distribution to an individual retirement plan, and

[(iii) in the case of a distribution of property other than money, the amount so transferred consists of the property distributed,

then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

[(B) CERTAIN RULES MADE APPLICABLE.—Rules similar to the rules of subparagraphs (B) through (E) of paragraph (5) and of paragraph (6) shall apply for purposes of this paragraph.]

(7) ROLLOVER WHERE SPOUSE RECEIVES DISTRIBUTIONS AFTER DEATH OR EMPLOYEE.—If any distribution attributable to an employee is paid to the spouse of the employee after the employee's death, paragraph (5) shall apply to such distribution in the same manner as if the spouse were the employee.

(8) CASH OR DEFERRED ARRANGEMENTS.—For purposes of this title, contributions made by an employer on behalf of an employee to a trust which is a part of a qualified cash or deferred arrangement (as defined in section 401(k)(2)) shall not be treated as distributed or made available to the employee nor as contributions made to the trust by the employee merely because the arrangement includes provisions under which the employee has an election whether the contribution will be made to the trust or received by the employee in cash.

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(e) TAX ON LUMP SUM DISTRIBUTIONS.—

(1) IMPOSITION OF SEPARATE TAX ON LUMP SUM DISTRIBUTIONS.—* * *

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(5) SPECIAL RULE WHERE PORTION OF LUMP-SUM DISTRIBUTION ATTRIBUTABLE TO ROLLOVER OF BOND PURCHASED UNDER QUALIFIED BOND PURCHASE PLAN.—If any portion of a lump-sum distribution is attributable to a transfer described in section 405(d)(3)(A)(ii) (as in effect before its repeal by the Tax Law Simplification and Improvement Act of 1983), paragraphs (1) and (3) of this subsection and paragraph (2) of subsection (a) shall not apply to such portion.

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SEC. 403. TAXATION OF EMPLOYEE ANNUITIES.

(a) TAXABILITY OF BENEFICIARY UNDER A QUALIFIED ANNUITY PLAN.—

(1) GENERAL RULE.—Except as provided in paragraph (2), if an annuity contract is purchased by an employer for an employee under a plan which meets the requirements of section 404(a)(2) (whether or not the employer deducts the amounts

paid for the contract under such section), the employee shall include in his gross income the amounts received under such contract for the year received as provided in section 72 (relating to annuities).

(2) CAPITAL GAINS TREATMENT FOR CERTAIN DISTRIBUTIONS.—

(A) GENERAL RULE.—If—

(i) an annuity contract is purchased by an employer for an employee under a plan described in paragraph (1);

(ii) such plan requires that refunds of contributions with respect to annuity contracts purchased under such plan be used to reduce subsequent premiums on the contracts under the plan; and

(iii) a lump sum distribution (as defined in section 402(e)(4)(A)) is paid to the recipient,

so much of the total taxable amount (as defined in section 402(e)(4)(D)) of such distribution as is equal to the product of such total taxable amount multiplied by the fraction described in section 402(a)(2) shall be treated as a gain from the sale or exchange of a capital asset held for more than 1 year. For purposes of this paragraph, in the case of an individual who is an employee without regard to section 401(c)(1), determination of whether or not any distribution is a lump sum distribution shall be made without regard to requirement that an election be made under subsection (e)(4)(B) of section 402, but no distribution to any taxpayer other than an individual, estate, or trust may be treated as a lump sum distribution under this paragraph.

(B) CROSS REFERENCE.—

For imposition of separate tax on ordinary income portion of lump sum distribution, see section 402(e).

(3) SELF-EMPLOYED INDIVIDUALS.—For purposes of this subsection, the term "employee" includes an individual who is an employee within the meaning of section 401(c)(1), and the employer of such individual is the person treated as his employer under section 401(c)(4).

(4) ROLLOVER AMOUNTS.—

(A) GENERAL RULE.—If—

[(i) the balance to the credit of an employee in an employer annuity described in paragraph (1) is paid to him in a qualifying rollover distribution.]

(i) any portion of the balance to the credit of an employee in an employee annuity described in paragraph (1) is paid to him,

(ii) the employee transfers any portion of the property he receives in such distribution to an eligible retirement plan, and

(iii) in the case of a distribution of property other than money, the amount so transferred consists of the property distributed,

then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

(B) Certain rules made applicable.—Rules similar to the rules of subparagraphs (B) through [(E)] *(F)* of section 402(a)(5) and of paragraphs (6) and (7) of section 402(a) shall apply for purposes of subparagraph (A).

(b) Taxability of Beneficiary Under Annuity Purchased by Section 501(c)(3) Organization or Public School.—

(1) General rule.—If—

(A) an annuity contract is purchased—

(i) for an employee by an employer described in section 501(c)(3) which is exempt from tax under section 501(a), or

(ii) for an employee (other than an employee described in clause (i)), who performs services for an educational organization described in section 170(b)(1)(A)(ii), by an employer which is a State, a political subdivision of a State, or an agency or instrumentality of any one or more of the foregoing,

(B) such annuity contract is not subject to subsection (a), and

(C) the employee's rights under the contract are nonforfeitable, except for failure to pay future premiums,

then amounts contributed by such employer for such annuity contract on or after such rights become nonforfeitable shall be excluded from the gross income of the employee for the taxable year to the extent that the aggregate of such amounts does not exceed the exclusion allowance for such taxable year. The employee shall include in his gross income the amounts received under such contract for the year received as provided in section 72 (relating to annuities). For purposes of applying the rules of this subsection to amounts contributed by an employer for a taxable year, amounts transferred to a contract described in this paragraph by reason of a rollover contribution described in paragraph (8) of this subsection or section 408(d)(3)(A)(iii) [or 409(b)(3)(C)] shall not be considered contributed by such employer.

* * * * * * *

(8) Rollover amounts.—

(A) General rule.—If—

[(i) the balance to the credit of an employee is paid to him in a qualifying distribution,]

(i) any portion of the balance to the credit of an employee in an annuity contract described in paragraph (1) is paid to him,

(ii) the employee transfers any portion of the property he receives in such distribution to an individual retirement plan or to an annuity contract described in paragraph (1), and

(iii) in the case of a distribution of property other than money, the property so transferred consists of the property distributed,

then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

[(B) QUALIFYING DISTRIBUTION DEFINED.—

[(i) IN GENERAL.—For purposes of subparagraph (A), the term "qualifying distribution" means 1 or more distributions from an annuity contract described in paragraph (1) which would constitute a lump sum distribution within the meaning of section 402(e)(4)(A) (determined without regard to subparagraphs (B) and (H) of section 402(e)(4)) if such annuity contract were described in subsection (a), or 1 or more distributions of accumulated deductible employee contributions (within the meaning of section 72(o)(5)).

[(ii) AGGREGATION OF ANNUITY CONTRACTS.—For purposes of this paragraph, all annuity contracts described in paragraph (1) purchased by an employer shall be treated as a single contract, and section 402(e)(4)(C) shall not apply.]

(B) SPECIAL RULES FOR PARTIAL DISTRIBUTIONS.—

(i) IN GENERAL.—In the case of any distribution other than a total distribution, rules similar to the rules of clauses (i) and (ii) of section 402(a)(5)(D) shall apply.

(ii) TOTAL DISTRIBUTION.—For purposes of subparagraph (A), the term total distribution means one or more distributions from an annuity contract described in paragraph (1) which would constitute a lump-sum distribution within the meaning of section 402(e)(4)(A) (determined without regard to subparagraphs (B) and (H) of section 402(e)(4)) if such annuity contract were described in subsection (a), or 1 or more distributions of accumulated deductible employee contributions (within the meaning of section 7205).

(iii) AGGREGATION OF ANNUITY CONTRACTS.—For purposes of this paragraph, all annuity contracts described in paragraph (1) purchased by an employer shall be treated as a single contract, and section 402(e)(4)(C) shall not apply.

(C) CERTAIN RULES MADE APPLICABLE.—Rules similar to the rules of subparagraphs (B), (C), [(D)(v), and (E)(i)] *(F)(i)* of section 402(a)(5) and of paragraphs (6) and (7) of section 402(a) shall apply for purposes of subparagraph (A).

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SEC. 404. DEDUCTION FOR CONTRIBUTIONS OF AN EMPLOYER TO AN EMPLOYEES' TRUST OR ANNUITY PLAN AND COMPENSATION UNDER A DEFERRED-PAYMENT PLAN.

(a) GENERAL RULE.—If contributions are paid by an employer to or under a stock bonus, pension, profit-sharing, or annuity plan, or if compensation is paid or accrued on account of any employee under a plan deferring the receipt of such compensation, such contributions or compensation shall not be deductible under section 162 (relating to trade or business expense) or section 212 (relating to expenses for the production of income); but, if they satisfy the conditions of either of such sections, they shall be deductible under this section, subject, however, to the following limitations as to the amounts deductible in any year:

(1) PENSION TRUSTS.—* * *

* * * * * * *

(8) SELF-EMPLOYED INDIVIDUALS.—In the case of a plan included in paragraph (1), (2), or (3) which provides contributions or benefits for employees some or all of whom are employees within the meaning of section 401(c)(1) for purposes of this section—

(A) the term "employee" includes an individual who is an employee within the meaning of section 401(c)(1), and the employer of such individual is the person treated as his employer under section 401(c)(4);

(B) the term "earned income" has the meaning assigned to it be section 401(c)(2);

(C) the contributions to such plan on behalf of an individual who is an employee within the meaning of section 401(c)(1) shall be considered to satisfy the conditions of section 162 or 212 to the extent that such contributions do not exceed the earned income of such individual *(determined without regard to the deductions allowed by this section and section 405(c))* derived from the trade or business with respect to which such plan is established, and to the extent that such contributions are not allocable (determined in accordance with regulations prescribed by the Secretary) to the purchase of life, accident, health, or other insurance; and

(D) any reference to compensation shall, in the case of an individual who is an employee within the meaning of section 401(c)(1), be considered to be a reference to the earned income of such individual derived from the trade or business with respect to which the plan is established.

[(9) PLANS BENEFITING SELF-EMPLOYED INDIVIDUALS.—In the case of a plan included in paragraph (1), (2), or (3) which provides contributions or benefits for employees some or all of whom are employees within the meaning of section 401(c)(1)—

[(A) the limitations provided by paragraphs (1), (2), (3), and (7) on the amounts deductible for any taxable year shall be computed, with respect to contributions on behalf of employees (other than employees within the meaning of section 401(c)(1)), as if such employees were the only employees for whom contributions and benefits are provided under the plan;

[(B) the limitations provided by paragraphs (1), (2), (3), and (7) on the amounts deductible for any taxable year shall be computed, with respect to contributions on behalf of employees within the meaning of section 401(c)(1).

[(i) as if such employees were the only employees for whom contributions and benefits are provided under the plan, and

[(ii) without regard to the second sentence of paragraph (3); and

[(C) the amounts deductible under paragraphs (1), (2), (3), and (7), with respect to contributions on behalf of any employee within the meaning of section 401(c)(1), shall not exceed the applicable limitation provided in subsection (e).]

[(10)] *(9)* CERTAIN CONTRIBUTIONS TO EMPLOYEE STOCK OWNERSHIP PLANS—

(A) PRINCIPAL PAYMENTS.—Notwithstanding the provisions of paragraphs (3) and (7), if contributions are paid into a trust which forms a part of an employee stock ownership plan (as described in section 4975(e)(7)), and such contributions are, on or before the time prescribed in paragraph (6), applied by the plan to the repayment of the principal of a loan incurred for the purpose of acquiring qualifying employer securities (as described in section 4975(e)(8)), such contributions shall be deductible under this paragraph for the taxable year determined under paragraph (6). The amount deductible under this paragraph shall not, however, exceed 25 percent of the compensation otherwise paid or accrued during the taxable year to the employees under such employee stock ownership plan. Any amount paid into such trust in any taxable year in excess of the amount deductible under this paragraph shall be deductible in the succeeding taxable years in order of time to the extent of the difference between the amount paid and deductible in each such succeeding year and the maximum amount deductible for such year under the preceding sentence.

(B) INTEREST PAYMENT.—Notwithstanding the provisions of paragraphs (3) and (7), if contributions are made to an employee stock ownership plan (described in subparagraph (A)) and such contributions are applied by the plan to the repayment of interest on a loan incurred for the purpose of acquiring qualifying employer securities (as described in subparagraph (A)), such contributions shall be deductible for the taxable year with respect to which such contributions are made as determined under paragraph (6).

* * * * * * *

[(f) CERTAIN LOAN REPAYMENTS CONSIDERED AS CONTRIBUTIONS.—For purposes of this section, any amount paid, directly or indirectly, by an owner-employee (within the meaning of section 401(c)(3)) in repayment of any loan which under section 72(m)(4)(B) was treated as an amount received under a contract purchased by a trust described in section 401(a) which is exempt from tax under section 501(a) or purchased as a part of a plan described in section 403(a) shall be treated as a contribution to which this section applies on behalf of such owner-employee to such trust or to or under such plan.]

* * * * * * *

(h) SPECIAL RULES FOR SIMPLIFIED EMPLOYEE PENSIONS.—

(1) IN GENERAL.—Employer contributions to a simplified employee pension shall be treated as if they are made to a plan subject to the requirements of this section. Employer contributions to a simplified employee pension are subject to the following limitations:

(A) Contributions made for a calendar year are deductible for the taxable year with which or within which the calendar year ends.

(B) Contributions made within 3½ months after the close of a calendar year are treated as if they were made on the last day of such calendar year if they are made on account of such calendar year.

(C) The amount deductible in a taxable year for a simplified employee pension shall not exceed 15 percent of the compensation paid to the employees during the calendar year ending with or within the taxable year. The excess of the amount contributed over the amount deductible for a taxable year shall be deductible in the succeeding taxable years in order of time, subject to the 15 percent limit of the preceding sentence.

(2) EFFECT ON STOCK BONUS AND PROFIT-SHARING TRUST.—For any taxable year for which the employer has a deduction under paragraph (1), the otherwise applicable limitations in subsection (a)(3)(A) shall be reduced by the amount of the allowable deductions under paragraph (1) with respect to participants in the stock bonus or profit-sharing trust.

(3) EFFECT ON LIMIT ON DEDUCTIONS.—For any taxable year for which the employer has a deduction under paragraph (1), the otherwise applicable 25 percent limitations in subsection (a)(7) shall be reduced by the amount of the allowable deductions under paragraph (1) with respect to participants in the stock bonus or profit-sharing trust.

[(4) EFFECT ON SELF-EMPLOYED INDIVIDUALS OR SHAREHOLDER-EMPLOYEES.—The limitations described in paragraphs (1), (2)(A), and (4) of subsection (e) or described in section 1379(b)(1) for any taxable year shall be reduced by the amount of the allowable deductions under paragraph (1) with respect to an employee within the meaning of section 401(c)(1) or a shareholder-employee (as defined in section 1379(D)).]

[(i) DEDUCTIBILITY OF UNUSED PORTIONS OF EMPLOYEE STOCK OWNERSHIP CREDIT.—

[(1) UNUSED CREDIT CARRYOVERS.—There shall be allowed as a deduction (without regard to any limitations provided under this section) for the last taxable year to which an unused employee stock ownership credit carryover (within the meaning of section 44G(b)(2)(A)) may be carried, an amount equal to the portion of such unused credit carryover which expires at the close of such taxable year.

[(2) REDUCTIONS IN CREDIT.—There shall be allowed as a deduction (subject to the limitations provided under this section) an amount equal to any reduction of the credit allowed under section 44G resulting from a final determination of such credit to the extent such reduction is not taken into account in section 44G(c)(3).]

(i) DEDUCTIBILITY OF UNUSED PORTIONS OF EMPLOYEE STOCK OWNERSHIP CREDIT.—

(1) UNUSED CREDIT CARRYOVERS.—If any portion of the employee stock ownership credit determined under section 41 for any taxable year has not, after the application of section 38(c),

been allowed under section 38 for any taxable year, such portion shall be allowed as a deduction (without regard to any limitations provided under this section) for the last taxable year to which such portion could have been allowed as a credit under section 39.

(2) Reductions in credit.—There shall be allowed as a deduction (subject to the limitations provided under this section) an amount equal to any reduction of the credit allowed under section 41 resulting from a final determination of such credit to the extent such reduction is not taken into account under section 41(c)(3).

* * * * * * *

[SEC. 405. QUALIFIED BOND PURCHASE PLANS.

[(a) Requirements for Qualification.—A plan of an employer for the purchase for and distribution to his employees or their beneficiaries of United States bonds described in subsection (b) shall constitute a qualified bond purchase plan under this section if—

[(1) the plan meets the requirements of section 401(a) (3), (4), (5), (6), (7), (8), (16), and (19) and, if applicable, the requirements of section 401(a) (9) and (10) and of section 401(d) (other than paragraphs (1), (5)(B), and (8)); and

[(2) contributions under the plan are used solely to purchase for employees or their beneficiaries United States bonds described in subsection (b).

[(b) Bonds to Which Applicable.—

[(1) Characteristics of bonds.—This section shall apply only to a bond issued under chapter 31 of title 31, which by its terms, or by regulations prescribed by the Secretary under such chapter—

[(A) provides for payment of interest, or investment yield, only upon redemption;

[(B) may be purchased only in the name of an individual;

[(C) ceases to bear interest, or provide investment yield, not later than 5 years after the death of the individual in whose name it is purchased;

[(D) may be redeemed before the death of the individual in whose name it is purchased only if such individual—

[(i) has attained the age of 59½ years, or

[(ii) has become disabled (within the meaning of section 72(m)(7)); and

[(E) is nontransferable.

[(2) Must be purchased in name of employee.—This section shall apply to a bond described in paragraph (1) only if it is purchased in the name of the employee.

[(c) Deduction for Contributions to Bond Purchase Plans.—Contributions paid by an employer to or under a qualified bond purchase plan shall be allowed as a deduction in an amount determined under section 404 in the same manner and to the same extent as if such contributions were made to a trust described in section 401(a) which is exempt from tax under section 501(a).

[(d) Taxability of Beneficiary of Qualified Bond Purchase Plan.—

[(1) Gross income not to include bonds at time of distribution.—For purposes of this chapter, in the case of a distributee of a bond described in subsection (b) under a qualified bond purchase plan, or from a trust described in section 401(a) which is exempt from tax under section 501(a), gross income does not include any amount attributable to the receipt of such bond. Upon redemption of such bond, except as provided in paragraph (3), the proceeds shall be subject to taxation under this chapter, but the provisions of section 72 (relating to annuities, etc.) and section 1232 (relating to bonds and other evidences of indebtedness) shall not apply.

[(2) Basis.—The basis of any bond received by a distributee under a qualified bond purchase plan—

[(A) if such bond is distributed to an employee, or with respect to an employee, who, at the time of purchase of the bond, was an employee other than an employee within the meaning of section 401(c)(1), shall be the amount of the contributions by the employee which were used to purchase the bond, and

[(B) if such bond is distributed to an employee, or with respect to an employee, who, at the time of purchase of the bond, was an employee within the meaning of section 401(c)(1), shall be the amount of the contributions used to purchase the bond which were made on behalf of such employee and were not allowed as a deduction under subsection (c).

The basis of any bond described in subsection (b) received by a distributee from a trust described in section 401(a) which is exempt from tax under section 501(a) shall be determined under regulations prescribed by the Secretary.

[(3) Rollover into an individual retirement account or annuity.——

(A) In General.—If—

[(i) any qualified bond is redeemed,

[(ii) any portion of the excess of the proceeds from such redemption over the basis of such bond is transferred to an individual retirement plant which is maintained for the benefit of the individual redeeming such bond, and

[(iii) such transfer is made on or before the 60th day after the day on which the individual received the proceeds of such redemption,

then, gross income shall not include the proceeds to the extent so transferred and the transfer shall be treated as a rollover contribution described in section 408(d)(3).]

[*(A) In general.—If—*

[*(i) any qualified bond is redeemed,*

[*(ii) any portion of the excess of the proceeds from such redemption over the basis of such bond is transferred to an individual retirement plan which is maintained for the benefit of the individual redeeming such* *bond, or to a qualified trust (as defined in section 402(a)(5)(D)(iii)) for the benefit of such individual, and*

[*(iii) such transfer is made on or before the 60th day after the individual received the proceeds of such redemption,*

then gross income shall not include the proceeds to the extent so transferred and the transfer shall be treated as a rollover contribution described in section 408(d)(3).]

[(B) QUALIFIED BOND.—For purposes of this paragraph, the term "qualified bond" means any bond described in subsection (b) which is distributed under a qualifed bond purchase plan or from a trust described in section 401(a) which is exempt from tax under section 501(a).

[(e) CAPTIAL GAINS TREATMENT AND LIMITATION OF TAX NOT TO APPLY TO BONDS DISTRIBUTED BY TRUSTS.—Subsections (a)(2) and (e) of section 402 shall not apply to any bond described in subsection (b) distributed to any distributee and, for purposes of applying such sections, any such bond distributed to any distributee and any such bond to the credit of any employee shall not be taken into account.]

SEC. 406. EMPLOYEES OF FOREIGN AFFILIATES COVERED BY SECTION 3121(1) AGREEMENTS.

(a) TREATMENT AS EMPLOYEES OF AMERICAN EMPLOYER.—For purposes of applying this part with respect to a pension, profit-sharing, or stock bonus plan described in section 401(a) [, an annuity plan described in section 403(a), or a bond purchase plan described in section 405(a)] or an annuity plan described in section 403(a), of an American employer (as defined in section 3121(h)), an individual who is a citizen of the United States and who is an employee of a foreign affiliate (as defined in section 3121(l)(8)) of such American employer shall be treated as an employee of such American employer, if—

(1) such American employer has entered into an agreement under section 3121(l) which applies to the foreign affiliate of which such individual is an employee;

(2) the plan of such American employer expressly provides for contributions or benefits for individuals who are citizens or residents of the United States and who are employees of its foreign affiliates to which an agreement entered into by such American employer under section 3121(l) applies; and

(3) contributions under a funded plan of deferred compensation (whether or not a plan described in section 401(a), [403(a), or 405(a)] *or 403(a)* are not provided by any other person with respect to the remuneration paid to such individual by the foreign affiliate.

* * * * * * *

(d) DEDUCTIBILITY OF CONTRIBUTIONS.—For purposes of applying [sections 404 and 405(c)] *section 404* with respect to contributions made to or under a pension, profit-sharing, stock bonus, [annuity, or bond purchase] *or annuity* plan by an American employer, or by another taxpayer which is entitled to deduct its contributions under section 404(a)(3)(B), on behalf of an individual who is treated as an employee of such American employer under subsection (a)—

(1) except as provided in paragraph (2), no deduction shall be allowed to such American employer or to any other taxpayer which is entitled to deduct its contributions under such sections,

(2) there shall be allowed as a deduction to the foreign affiliate of which such individual is an employee an amount equal to the amount which (but for paragraph (1)) would be deductible under section 404 [(or section 405(c))] by the American employer if he were an employee of the American employer, and

(3) any reference to compensation shall be considered to be a reference to the total compensation of such individual (determined with the application of subsection (b)(2)).

Any amount deductible by a foreign affiliate under this subsection shall be deductible for its taxable year with or within which the taxable year of such American employer ends.

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SEC. 407. CERTAIN EMPLOYEES OF DOMESTIC SUBSIDIARIES ENGAGED IN BUSINESS OUTSIDE THE UNITED STATES.

* * * * * * *

(a) TREATMENT AS EMPLOYEES OF DOMESTIC PARENT CORPORATION.—

(1) IN GENERAL.—For purposes of applying this part with respect to a pension, profit-sharing, or stock bonus plan described in section 401(a) [, an annuity plan described in section 403(a), or a bond purchase plan described in section 405(a)] *or an annuity plan described in section 403(a),* of a domestic parent corporation, an individual who is a citizen or resident of the United States and who is an employee of a domestic subsidiary (within the meaning of paragraph (2)) of such domestic parent corporation shall be treated as an employee of such domestic parent corporation, if—

(A) the plan of such domestic parent corporation expressly provides for contributions or benefits for individuals who are citizens or residents of the United States and who are employees of its domestic subsidiaries; and

(B) contributions under a funded plan of deferred compensation (whether or not a plan described in section 401(a) [, 403(a), or 405(a)] *or 403(a)* are not provided by any other person with respect to the remuneration paid to such individual by the domestic subsidiary.

* * * * * * *

(d) DEDUCTIBILITY OF CONTRIBUTIONS.—For purposes of applying [sections 404 and 405(c)] *section 404* with respect to contributions made to or under a pension, profit-sharing, stock bonus, [annuity, or bond purchase] *or annuity* plan by a domestic parent corporation, or by another corporation which is entitled to deduct its contributions under section 404(a)(3)(B), on behalf of an individual who is treated as an employee of such domestic corporation under subsection (a)—

(1) except as provided in paragraph (2), no deduction shall be allowed to such domestic parent corporation or to any other corporation which is entitled to deduct its contributions under such sections,

(2) there shall be allowed as a deduction to the domestic subsidiary of which such individual is an employee an amount equal to the amount which (but for paragraph (1)) would be deductible under section 404 [(or section 405(c))] by the domestic parent corporation if he were an employee of the domestic parent corporation, and

(3) any reference to compensation shall be considered to be a reference to the total compensation of such individual (determined with the application of subsection (b)(2)).

Any amount deductible by a domestic subsidiary under this subsection shall be deductible for its taxable year with or within which the taxable year of such domestic parent corporation ends.

* * * * * * *

SEC. 408. INDIVIDUAL RETIREMENT ACCOUNTS.

(a) Individual Retirement Account.—For purposes of this section, the term "individual retirement account" means a trust created or organized in the United States for the exclusive benefit of an individual or his beneficiaries, but only if the written governing instrument creating the trust meets the following requirements:

(1) Except in the case of a rollover contribution described in subsection (d)(3), in section 402(a)(5), 402(a)(7), 403(a)(4), [403(b)(8), 405(d)(3), or 409(b)(3)(C)] *or 403(b)(8),* no contribution will be accepted unless it is in cash, and contributions will not be accepted for the taxable year in excess of [$2,000] *$3,750* on behalf of any individual.

* * * * * * *

(8) The trustee maintains such records as may be necessary to separately account for designated nondeductible contributions and for income and gains attributable to such contributions.

(b) Individual Retirement Annuity.—For purposes of this section, the term "individual retirement annuity" means an annuity contract, or an endowment contract (as determined under regulations prescribed by the Secretary), issued by an insurance company which meets the following requirements:

(1) The contract is not transferable by the owner.

(2) Under the contract—

(A) the premiums are not fixed,

(B) the annual premium on behalf of any individual will not exceed $2,000, and

(C) any refund of premiums will be applied before the close of the calendar year following the year of the refund toward the payment of future premiums of the purchase of additional benefits.

(3) The entire interest of the owner will be distributed to him not later than the close of his taxable year in which he attains age 70½ or will be distributed, in accordance with regulations prescribed by the Secretary, over—

(A) the life of such owner or the lives of such owner and his spouse, or

(B) a period not extending beyond the life expectancy of such owner or the life expectancy of such owner and his spouse.

(4) If the owner dies before his entire interest has been distributed to him, or if distribution has been commenced as provided in paragraph (3) to his surviving spouse and such surviving spouse dies before the entire interest has been distributed to such spouse, the entire interest (or the remaining part of such interest if distribution thereof has commenced) will, within 5 years after his death (or the death of the surviving spouse), be distributed, or applied to the purchase of an immediate annuity for his beneficiary or beneficiaries (or the beneficiary or beneficiaries of his surviving spouse) which will be payable for the life of such beneficiary or beneficiaries (or for a term certain not extending beyond the life expectancy of such beneficiary or beneficiaries) and which annuity will be immediately distributed to such beneficiary or beneficiaries. The preceding sentence shall have no application if distributions over a term commenced before the death of the owner and the term certain is for a period permitted under paragraph (3).

(5) The entire interest of the owner is nonforfeitable.

(6) The issuer of such contract maintains such records as may be necessary to separately account for designated nondeductible contributions and for income and gains attributable to such contributions.

Such term does not include such an annuity contract for any taxable year of the owner in which it is disqualified on the application of subsection (e) or for any subsequent taxable year. For purposes of this subsection, no contract shall be treated as an endowment contract if it matures later than the taxable year in which the individual in whose name such contract is purchased attains age 70½; if it is not for the exclusive benefit of the individual in whose name it is purchased or his beneficiaries; or if the aggregate annual premiums under all such contracts purchased in the name of such individual for any taxable year exceed **[**$2,000**]** *$3,750.*

(d) TAX TREATMENT OF DISTRIBUTIONS.—

[(1) IN GENERAL.—Except as otherwise provided in this subsection, any amount paid or distributed out of an individual retirement account or under an individual retirement annuity shall be included in gross income by the payee or distributee, as the case may be, for the taxable year in which the payment or distribution is received. Notwithstanding any other provision of this title (including chapters 11 and 12), the basis of any person in such an account or annuity is zero.

[(2) DISTRIBUTIONS OF ANNUITY CONTRACTS.—Paragraph (1) does not apply to any annuity contract which meets the requirements of paragraphs (1), (3), (4), and (5) of subsection (b) and which is distributed from an individual retirement account. Section 72 applies to any such annuity contract, and for purposes of section 72 the investment in such contract is zero.**]**

(1) IN GENERAL.—Except as otherwise provided in this subsection, any amount paid or distributed out of an individual retirement account or under an individual retirement annuity shall—

(A) first be treated as paid or distributed out of income and gains attributable to designated nondeductible contributions (to the extent thereof),

(B) second be treated as paid or distributed out of designated nondeductible contributions (to the extent thereof), and

(C) then be treated as paid or distributed out of other amounts.

(2) TREATMENT OF DISTRIBUTIONS.—

(A) ORDINARY INCOME AMOUNTS.—Any amount to which subparagraph (A) or (C) of paragraph (1) applies shall be included in gross income by the payee or distributee (as the case may be) for the taxable year in which the payment or distribution is received.

(B) BASIS RECOVERY.—Any amount to which subparagraph (B) of paragraph (1) applies shall be excluded from gross income.

(C) DISTRIBUTIONS OF ANNUITY CONTRACTS.—Paragraph (1) shall not apply to the distribution from an individual retirement account of an annuity contract which meets the requirements of paragraph (1), (3), (4), and (5) of subsection (b); except that paragraph (1) shall apply to any distributions under such contract.

(D) LOSS.—If—

(i) the aggregate amount of designated nondeductible contributions to any individual retirement account or annunity, exceeds

(ii) the aggregate amount paid or distributed out of such account or under such annuity,

an amount equal to such excess shall be allowed as a deduction to the individual for the last taxable year in which such account or annuity is in existence.

(3) ROLLOVER CONTRIBUTION.—An amount is described in this paragraph as a rollover contribution if it meets the rquirements of subparagraphs (A) and (B).

(A) IN GENERAL.—Paragraph (1) does not apply to any amount paid or distributed out of an individual retirement account or individual retirement annuity to the individual for whose benefit the account or annuity is maintained if—

(i) the entire amount received (including money and any other property) is paid into an individual retirement account or individual retirement annuity (other than an endowment contract) [or retirement bond] for the benefit of such individual not later than the 60th day after the day on which he receives the payment or distribution;

(ii) the entire amount received (including money and any other property) represents the entire amount in the account or the entire value of the annuity and no amount in the account and no part of the value of the annuity is attributable to any source other than a rollover contribution *of a qualified total distribution (as defined in section 402(a)(5)(E)(i))* from an employee's trust described in section 401(a) which is exempt from tax under section 501(a) (other than a trust forming part of a plan under which the individual was as employee within the meaning of section 401(c)(1) at the time contributions were made on his behalf under the plan), or an annuity plan described in section 403(a) (other than a plan under which the individual was an employee within the meaning of section 401(c)(1) at the time contributions were made on his behalf under the plan) and any earnings on such sums and the entire amount thereof is paid into another such trust (for the benefit of such individual) or annuity plan not later than the 60th day on which he receives the payment or distribution; or

(iii)(I) the entire amount received (including money and other property) represents the entire interest in the account or the entire value of the annuity,

(II) no amount in the account and no part of the value of the annuity is attributable to any source other than a rollover contribution from an annuity contract described in section 403(b) and any earnings on such rollover, and

(III) the entire amount thereof is paid into another annuity contract described in section 403(b) (for the benefit of such individual) not later than the 60th day after he receives the payment or distribution.

(B) Limitation.—This paragraph does not apply to any amount described in subparagraph (A)(i) received by an individual from an individual retirement account or individual retirement annuity if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in that subparagraph from an individual retirement account **[**, individual retirement annuity, or a retirement bond**]** *or an individual retirement annuity,* which was not includible in his gross income because of the application of this paragraph. Clause (ii) of subparagraph (A) shall not apply to any amount paid or distributed out of an individual retirement account or an individual retirement annuity to which an amount was contributed which was treated as a rollover contribution by section 402(a)(7) (or in the case of an individual retirement annuity, such section as made applicable by section 403(a)(4)(B)).

(C) Denial of rollover treatment for inherited accounts, etc.—

(i) In general.—In the case of an inherited individual retirement account or individual retirement annuity—

(I) this paragraph shall not apply to any amount received by an individual from such an account or annuity (and no amount transferred from such account or annuity to another individual retirement account or annuity shall be excluded from gross income by reason of such transfer), and

(II) such inherited account or annuity shall not be treated as an individual retirement account or annuity for purposes of determining whether any other amount is a rollover contribution.

(ii) Inherited individual retirement account or annuity.—An individual retirement account or individual retirement annuity shall be treated as inherited if—

(I) the individual for whose benefit the account or annuity is maintained acquired such account by reason of the death of another individual, and

(II) such individual was not the surviving spouse of such other individual.

[(C)**]** *(D)* Partial rollovers permitted.—

(i) In general.—If any amount paid or distributed out of an individual retirement account or individual retirement annuity would meet the requirements of subparagraph (A) but for the fact that the entire amount was not paid into an eligible plan as required by clause (i), (ii), or (iii) of subparagraph (A), such amount shall be treated as meeting the requirements of subparagraph (A) to the extent it is paid into an eligible plan referred to in such clause not later than the 60th day referred to in such clause.

(ii) Eligible plan.—For purposes of clause (i), the term "eligible plan" means any account, annuity, **[**bond,**]** contract, or plan referred to in subparagraph (A).

(E) Separate reporting for amounts attributable to designated nondeductible contributions.—For purposes of this paragraph, the Secretary shall prescribe regulations providing for such allocations of amounts attributable to designated nondeductible contributions (as defined in section 4973(c)(2)) as may be necessary to ensure that the separate treatment of such contributions and the income and gain attributable to such contributions is maintained.

(4) Excess contributions returned before due date of return.—Paragraph (1) does not apply to the distribution of any contribution paid during a taxable year to an individual retirement account or for an individual retirement annuity to the extent that such contribution exceeds the amount allowable as a deduction under section 219 if—

(A) such distribution is received on or before the day prescribed by law (including extensions of time) for filing such individual's return for such taxable year,

(B) no deduction is allowed under section 219 with respect to such excess contribution, and

(C) such distribution is accompanied by the amount of net income attributable to such excess contribution.

In the case of such a distribution, for purposes of section 61, any net income described in subparagraph (C) shall be deemed to have been earned and receivable in the taxable year in which such excess contribution is made.

(5) CERTAIN DISTRIBUTIONS OF EXCESS CONTRIBUTIONS AFTER DUE DATE FOR TAXABLE YEAR.

(A) IN GENERAL.—In the case of any individual, if the aggregate contributions (other then rollover contributions) paid for any taxable year to an individual retirement account or for an individual retirement annuity do not exceed [$2,250,] *$4,000,* paragraph (1) shall not apply to the distribution of any such contribution to the extent that such contribution exceeds the amount allowable as a deduction under section 219 for the taxable year for which the contribution was paid—

(i) if such distribution is received after the date described in paragraph (4),

(ii) but only to the extent that no deduction has been allowed under section 219 with respect to such excess contribution.

If employer contributions on behalf of the individual are paid for the taxable year to a simplified employee pension, the dollar limitation of the preceding sentence shall be increased by the lesser of the amount of such contributions or $15,000.

(B) EXCESS ROLLOVER CONTRIBUTIONS ATTRIBUTABLE TO ERRONEOUS INFORMATION.—if—

(i) the taxpayer reasonably relies on information supplied pursuant to subtitle F for determining the amount of a rollover contribution, but

(ii) the information was erroneous,

subparagraph (A) shall be applied by increasing the dollar limit set forth therein by that portion of the excess contribution which was attributable to such information.

(6) TRANSFER OF ACCOUNT INCIDENT TO DIVORCE.—The transfer of an individual's interest in an individual retirement account [, individual retirement annuity, or retirement bond] *or an individual retirement annuity,* to his former spouse under a divorce decree or under a written instrument incident to such divorce is not to be considered a taxable transfer made by such individual notwithstanding any other provision of this subtitle, and such interest at the time of the transfer is to be treated as an individual retirement account of such spouse, and not of such individual. Thereafter such account [, annuity, or bond] *annuity* for purposes of this subtitle is to be treated as maintained for the benefit of such spouse.

* * * * * * *

(h) CUSTODIAL ACCOUNTS.—For purposes of this section, a custodial account shall be treated as a trust if the assets of such account are held by a bank (as defined in [section 401(d)(1))] *subsection (n)*) or another person who demonstrates, to the satisfaction of the Secretary, that the manner in which he will administer the account will be consistent with the requirements of this section, and if the custodial account would, except for the fact that it is not a trust constitute an individual retirement account described in subsection (a). For purposes of this title, in the case of a custodial account treated as a trust by reason of the preceding sentence, the custodian of such account shall be treated as the trustee thereof.

* * * * * * *

(j) INCREASE IN MAXIMUM LIMITATIONS FOR SIMPLIFIED EMPLOYEE PENSIONS.—In the case of a simplified employee pension, this section shall be applied by substituting "$17,000" for "[$2,000]" *$3,750* in the following provisions:

(1) paragraph (1) of subsection (a), and

(2) paragraph (2) of subsection (b).

(k) SIMPLIFIED EMPLOYEE PENSION DEFINED.—

[(1) IN GENERAL.—For purposes of this title, the term "simplified employee pension" means an individual retirement account or individual retirement annuity with respect to which the requirements of paragraphs (2), (3), (4), and (5) of this subsection are met.]

(1) IN GENERAL.—For purposes of this title, the term "simplified employee pension" means an individual retirement account or individual retirement annuity—

(A) with respect to which the requirements of paragraphs (2), (3), (4), and (5) of this subsection are met, and

(B) if such account or annuity is part of a top-heavy plan (as defined in section 416), with respect to which the requirements of section 416(c)(2) are met.

(2) PARTICIPATION REQUIREMENTS.—This paragraph is satisfied with respect to a simplified employee pension for a calendar year only if for such year the employer contributes to the simplified employee pension of each employee who—

(A) has attained age 25, and

(B) has performed service for the employer during at least 3 of the immediately preceding 5 calendar years.

For purposes of this paragraph, there shall be excluded from consideration employees described in subparagraph (A) or (C) of section 410(b)(3).

(3) CONTRIBUTIONS MAY NOT DISCRIMINATE IN FAVOR OF THE HIGHLY COMPENSATED, ETC.—

(A) IN GENERAL.—The requirements of this paragraph are met with respect to a simplified employee pension for a calendar year if for such year the contributions made by the employer to simplified employee pensions for his employees do not discriminate in favor of any employee who is—

(i) an officer,

(ii) a shareholder,

(iii) a self-employed individual, or

(iv) highly compensated.

(B) SPECIAL RULES.—For purposes of subparagraph (A)—

(i) there shall be excluded from consideration employees described in subparagraph (A) or (C) of section 410(b)(3), and

(ii) an individual shall be considered a shareholder if he owns (with the application of section 318) more than 10 percent of the value of the stock of the employer.

(C) CONTRIBUTIONS MUST BEAR UNIFORM RELATIONSHIP TO TOTAL COMPENSATION.—For purposes of subparagraph (A), employer contributions to simplified employee pensions shall be considered discriminatory unless contributions thereto bear a uniform relationship to the total compensation (not in excess of the first $200,000) of each employee maintaining a simplified employee pension. *The Secretary shall annually adjust the $200,000 amount contained in the preceding sentence at the same time and in the same manner as he adjusts the dollar amount contained in section 415(c)(1)(A).*

(D) TREATMENT OF CERTAIN CONTRIBUTIONS AND TAXES.—Except as provided in this subparagraph, employer contributions do not meet the requirements of this paragraph unless such contributions meet the requirements of this paragraph without taking into account contributions for benefits under chapter 2 (relating to tax on self-employment income), chapter 21 (relating to Federal Insurance Contributions Act), title II of the Social Security Act, or any other Federal or State law. [If the employer does not maintain an integrated plan at any time during the taxable year, taxes paid under section 3111 (relating to tax on employers) with respect to an employee may, for purposes of this paragraph, be taken into account as a contribution by the employer to an employee's simplified employee pension. If contributions are made to the simplified employee pension of an owner-employee, the preceding sentence shall not apply unless taxes paid by all such owner-employees under chapter 2, and the taxes which would be payable under chapter 2 by such owner-employees but for paragrpahs (4) and (5) of section 1402(c), are taken into account as contributions by the employer on behalf of such owner-employees.]

If the employer does not maintain an integrated plan at any time during the taxable year, OASDI contributions (as defined in section 401(l)(2)) may, for purposes of this paragraph, be taken into account as contributions by the employer to the employee's simplified employee pension, but only if such contributions are so taken into account with respect to each employee maintaining a simplified employee pension.

(E) INTEGRATED PLAN DEFINED.—For purposes of subparagraph (D), the term "integrated plan" means a plan which meets the requirements of section 401(a), [403(a), or 405(a)] or *403(a)* but would not meet such requirements if contributions or benefits under chapter 2 (relating to tax on self-employment income), chapter 21 (relating to Federal Insurance Contributions Act), title II of the Social Security Act, or any other Federal or State law were not taken into account.

* * * * * * *

[SEC. 409. RETIREMENT BONDS.

[(a) RETIREMENT BOND.—For purposes of this section and section 219(a), the term "retirement bond" means a bond issued under chapter 31 of title 31, which by its terms, or by regulations prescribed by the Secretary under such chapter—

[(1) provides for payment of interest, or investment yield, only on redemption;

[(2) provides that no interest, or investment yield, is payable if the bond is redeemed within 12 months after the date of its issuance;

[(3) provides that it ceases to bear interest, or provide investment yield on the earlier of—

[(A) the date on which the individual in whose name it is purchased (hereinafter in this section referred to as the "registered owner") attains age 70½; or

[(B) 5 years after the date on which the registered owner dies, but not later than the date on which he would have attained the age 70½ had he lived;

[(4) provides that, except in the case of a rollover contribution described in subsection (b)(3)(C) or in section 402(a)(5), 402(a)(7), 403(b)(8), or 408(d)(3) the registered owner may not contribute on behalf of any individual for the purchase of such bonds in excess of $2,000 for any taxable year; and

[(5) is not transferable.

[(b) INCOME TAX TREATMENT OF BONDS.—

[(1) IN GENERAL.—Except as otherwise provided in this subsection, on the redemption of a retirement bond the entire proceeds shall be included in the gross income of the taxpayer entitled to the proceeds on redemption. If the registered owner has not tendered it for redemption before the close of the taxable year in which he attains age 70½ such individual shall include in his gross income for such taxable year the amount of proceeds he would have received if the bond had been redeemed at age 70½. The provisions of section 72 (relating to annuities) and section 1232 (relating to bonds and other evidences of indebetedness) shall not apply to a retirement bond.

[(2) BASIS.—The basis of a retirement bond is zero.

[(3) EXCEPTIONS.—

[(A) REDEMPTION WITHIN 12 MONTHS.—If a the extent that the bond was purchased with a rollover contribution described in subparagraph (C) of this paragraph or in section 402(a)(5), 402(a)(7), 403(a)(4), 403(b)(8), 405(b)(3), or 408(d)(3).

[(B) REDEMPTION AFTER AGE 70½.—If a retirement bond is redeemed after the close of the taxable year in which the registered owner attains age 70½ the proceeds from the redemption of the bond are excluded from the gross income of the registered owner to the extent that such proceeds were includible in his gross income for such taxable year.

[(C) ROLLOVER INTO AN INDIVIDUAL RETIREMENT ACCOUNT OR ANNUITY OR A QUALIFIED PLAN.—If a retirement bond is redeemed at any time before the close of the taxable year in which the registered owner attains age 70½ and the registered owner transfers the entire amount of the proceeds from the redemption of the bond to an individual retirement account described in section 408(a) or to an individual retirement annuity described in section 408(b) (other than an endowment contract) which is maintained for the benefit of the registered owner of the bond, or to an employees' trust described in section 401(a) which is exempt from tax under section 501(a), an annuity plan described in section 403(a), or an annuity contract described in section 403(b) for the benefit of the registered owner, on or before the 60th day after the day on which he received the proceeds of such redemption, then the proceeds shall be excluded from gross income and the transfer shall be treated as a rollover contribution described in section 408(d)(3). This subparagraph does not apply in the case of a transfer to such an employees' trust or such an annuity plan unless no part of the value of such proceeds is attributable to any source other than a rollover contribution from such an employees' trust or annuity plan (other than an annuity plan or a trust forming part of a plan under which the individual was an employee within the meaning of section 401(c)(1) at the time contributions were made on his behalf under the plan).] *This subparagraph does not apply in the case of a transfer to such an employees' trust or such an annuity unless no part of the value of such proceeds is attributable to any source other than a qualified rollover contribution. For purposes of the preceding sentences, the term "qualified rollover contribution" means any rollover contribution of a qualified total distribution (as defined in section 402(a)(5)(E)(i)) which is from such an employees' trust or annuity plan (other than an annuity plan or a trust forming part of a plan under which an individual was an employee within the meaning of section 401(c)(1) at the time contributions were made on his behalf under such plan), and which did not qualify as a rollover contribution by reason of section 402(a)(7).* This subparagraph does not apply in the case of a transfer to an annuity contract described in section 403(b) unless no part of the value of such proceeds is attributable to any source other than a rollover contribution from such an annuity contract. This subparagraph shall not apply to any retirement bond if such bond is acquired by the owner by reason of the death of another individual and the owner was not the surviving spouse of such other individual.

[(D) PARTIAL ROLLOVERS PERMITTED.—Rules similar to the rules of section 408(d)(3)(C) shall apply for purposes of subparagraph (C).

[(c) ADDITIONAL TAX ON CERTAIN REDEMPTIONS BEFORE AGE 59½—

[(1) EARLY REDEMPTION OF BOND.—If a retirement bond is redeemed by the registered owner before he attains age 59½ his tax under this chapter for the taxable year in which the bond is redeemed shall be increased by an amount equal to 10 percent of the amount of the proceeds of the redemption includible in his gross income for the taxable year.

[(2) DISABILITY CASES.—Paragraph (1) does not apply for any taxable year during which the retirement bond is redeemed if, for that taxable year, the registered owner is disabled within the meaning of section 72(m)(7).

[(3) REDEMPTION WITHIN ONE YEAR.—Paragraph (1) does not apply if the registered owner tenders the bond for redemption within 12 months after the date of its issuance.]

SEC. [409A.] *409.* QUALIFICATIONS FOR TAX CREDIT EMPLOYEE STOCK OWNERSHIP PLANS.

(a) TAX CREDIT EMPLOYEE STOCK OWNERSHIP PLAN DEFINED.—Except as otherwise provided in this title, for purposes of this title, the term "tax credit employee stock ownership plan" means a defined contribution plan which—

(1) meets the requirements of section 401(a),

(2) is designed to invest primarily in employer securities, and

(3) meets the requirements of subsections (b), (c), (d), (e), (f), (g), and (h) of this section.

(b) Required Allocation of Employer Securities.—

(1) In general.—A plan meets the requirements of this subsection if—

(A) the plan provides for the allocation for the plan year of all employer securities transferred to it or purchased by it (because of the requirements of section [48(n)(1)(A) or 44G]*41*(c)(1)(B) to the accounts of all participants who are entitled to share in such allocation, and

(B) for the plan year the allocation to each participant so entitled is an amount which bears substantially the same proportion to the amount of all such securities allocated to all such participants in the plan for that year as the amount of compensation paid to such participant during that year bears to the compensation paid to all such participants during that year.

(2) Compensation in excess of $100,000 disregarded.—For purposes of paragraph (1), compensation of any participant in excess of the first $100,000 per year shall be disregarded.

(3) Determination of compensation.—For purposes of this subsection, the amount of compensation paid to a participant for any period is the amount of such participant's compensation (within the meaning of section 415(c)(3)) for such period.

(4) Suspension of allocation in certain cases.—Notwithstanding paragraph (1), the allocation to the account of any participant which is attributable to the basic employee plan credit or the credit allowed under section [44G] *41* (relating to the employee stock ownership credit) may be extended over whatever period may be necessary to comply with the requirements of section 415.

* * * * * * *

(g) Transferred Amounts Must Stay in Plan Even Though Investment Credit is Redetermined or Recaptured.—A plan meets the requirement of this subsection only if it provides that amounts which are transferred to the plan (because of the requirements of section 48(n)(1) or [44G] *41*(c)(1)(B)) shall remain in the plan (and, if allocated under the plan, shall remain so allocated) even though part or all of the employee plan credit or the credit allowed under section [44G] *41* (relating to employee stock ownership credit) is recaptured or redetermined. *For purposes of the preceding sentence, the references to section 48(n)(1) and the employee plan credit shall refer to such section and credit as in effect before the enactment of the Tax Law Simplification and Improvement Act of 1983.*

* * * * * * *

(i) Reimbursement for Expenses of Establishing and Administering Plan.—A plan which otherwise meets the requirements of this section shall not be treated as failing to meet such requirements merely because it provides that—

(1) Expenses of establishing plan.—As reimbursement for the expenses of establishing the plan, the employer may withhold from amounts due the plan for the taxable year for which the plan is established (or the plan may pay) so much of the amounts paid or incurred in connection with the establishment of the plan as does not exceed the sum of—

(A) 10 percent of the first $100,000 which the employer is required to transfer to the plan for that taxable year under section [48(n)(1) or] [44G] *41*(c)(1)(B), and

(B) 5 percent of any amount so required to be transferred in excess of the first $100,000; and

(2) Administrative expenses.—As reimbursement for the expenses of administering the plan, the employer may withhold from amounts due the plan (or the plan may pay) so much of the amounts paid or incurred during the taxable year as expenses of administering the plan as does not exceed the lesser of—

(A) the sum of—

(i) 10 percent of the first $100,000 of the dividends paid to the plan with respect to stock of the employer during the plan year ending with or within the employer's taxable year, and

(ii) 5 percent of the amount of such dividends in excess of $100,000 or

(B) $100,000.

* * * * * * *

(k) Requirements Relating to Certain Withdrawals.—Notwithstanding any other law or rule of law—

(1) the withdrawal from a plan which otherwise meets the requirements of this section by the employer of an amount contributed for purposes of the matching employee plan credit shall not be considered to make the benefits forfeitable, and

(2) the plan shall not, by reason of such withdrawal, fail to be for the exclusive benefit of participants or their beneficiaries,

if the withdrawn amounts were not matched by employee contributions or were in excess of the limitations of section 415. Any withdrawal described in the preceding sentence shall not be considered to violate the provisions of section 403(c)(1) of the Employee Retirement Income Security Act of 1974. *For purposes of this subsection, the reference to the matching employee plan credit shall refer to such credit as in effect before the enactment of the Tax Law Simplification and Improvement Act of 1983.*

* * * * * * *

(m) Nonrecognition of Gain or Loss on Contribution of Employer Securities to Tax Credit Employee Stock Ownership Plan.—No gain or loss shall be recognized to the taxpayer with respect to the transfer of employer securities to a tax credit employee stock ownership plan maintained by the taxpayer to the extent that such transfer is required under section [44G] *41*(c)(1)(B), or subparagraph (A) or (B) of section 48(n)(1).

(n) Cross References.—

For requirements for allowance of employee plan credit, see section 48(n).

(2) For assessable penalties for failure to meet requirements of this section, or for failure to make contributions required with respect to the allowance of an employee plan credit or employee stock ownership credit, see section 6699.

(3) For requirements for allowance of an employee stock ownership credit, see section [44G]. *41*.

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Subpart B—Special Rules

* * * * * * *

SEC. 412. MINIMUM FUNDING STANDARDS.

(a) General Rule.—Except as provided in subsection (h), this section applies to a plan if, for any plan year beginning on or after the effective date of this section for such plan—

(1) such plan included a trust which qualified (or was determined by the Secretary to have qualified) under section 401(a), or

(2) such plan satisfied (or was determined by the Secretary to have satisfied) the requirements of section 403(a) [or 405(a)].

A plan to which this section applies shall have satisfied the minimum funding standard for such plan for a plan year if as of the end of such plan year, the plan does not have an accumulated funding deficiency. For purposes of this section and section 4971, the term "accumulated funding deficiency" means for any plan the excess of the total charges to the funding standard account for all plan years (beginning with the first plan year to which this section applies) over the total credits to such account for such years or, if less, the excess of the total charges to the alternative minimum funding standard account for such plan years over the total credits to such account for such years. In any plan year in which a multiemployer plan is in reorganization, the accumulated funding deficiency of the plan shall be determined under section 418B.

* * * * * * *

SEC. 414. DEFINITIONS AND SPECIAL RULES.

(a) Service for Predecessor Employer.—* * *

* * * * * * *

(h) Tax Treatment of Certain Contributions.—

(1) In general.—Effective with respect to taxable years beginning after December 31, 1973, for purposes of this title, any amount contributed—

(A) to an employees' trust described in section 401(a), or

(B) under a plan described in section 403(a) [or 405(a)],

shall not be treated as having been made by the employer if it is designated as an employee contribution.

(2) Designation by units of government.—For purposes of paragraph (1), in the case of any plan established by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing, where the contributions of employing units are designated as employee

contributions but where any employing unit picks up the contributions, the contributions so picked up shall be treated as employer contributions.

* * * * * * *

(l) MERGERS AND CONSOLIDATION OF PLANS OR TRANSFERS OF PLAN ASSETS.—A trust which forms a part of a plan shall not constitute a qualified trust under section 401 and a plan shall be treated as not described in section 403(a) [or 405] unless in the case of any merger or consolidation of the plan with, or in the case of any transfer of assets or liabilities of such plan to, any other trust plan after September 2, 1974, each participant in the plan would (if the plan then terminated) receive a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation, or transfer (if the plan had then terminated). The preceding sentence does not apply to any multiemployer plan with respect to any transaction to the extent that participants either before or after the transaction are covered under a multiemployer plan to which title IV of the Employee Retirement Income Security Act of 1974 applies.

* * * * * * *

SEC. 415. LIMITATIONS ON BENEFITS AND CONTRIBUTION UNDER QUALIFIED PLANS.

(a) GENERAL RULE.—

(1) TRUSTS.—A trust which is a part of a pension, profit-sharing, or stock bonus plan shall not constitute a qualified trust under section 401(a) if—

(A) in the case of a defined benefit plan, the plan provides for the payment of benefits with respect to a participant which exceed the limitation of subsection (b),

(B) in the case of a defined contribution plan, contributions and other additions under the plan with respect to any participant for any taxable year exceed the limitation of subsection (c), or

(C) in any case in which an individual is a participant in both a defined benefit plan and a defined contribution plan maintained by the employer, the trust has been disqualified under subsection (g).

(2) SECTION APPLIES TO CERTAIN ANNUITIES AND ACCOUNTS.—In the case of—

(A) an employee annuity plan described in section 403(a),

(B) an annuity contract described in section 403(b), *or*

(C) a simplified employee pension described in section 408(k), [or]

[(D) a plan described in section 405(a),]

such a contract, plan, or pension shall not be considered to be described in section 403(a), 403(b), [405(a),] or 408(k), as the case may be, unless it satisfies the requirements of subparagraph (A) or subparagraph (B) of paragraph (1), whichever is appropriate, and has not been disqualified under subsection (g). In the case of an annuity contract described in section 403(b), the preceding sentence shall apply only to the portion of the annuity contract which exceeds the limitation of subsection (b) or the limitation of subsection (c), whichever is appropriate, and the amount of the contribution for such portion shall reduce the exclusion allowance as provided in section 403(b)(2).

(b) LIMITATION FOR DEFINED BENEFIT PLANS.—

(1) IN GENERAL.—Benefits with respect to a participant exceed the limitation of this subsection if, when expressed as an annual benefit (within the meaning of paragraph (2)), such annual benefit is greater than the lesser of—

(A) $90,000, or

(B) 100 percent of the participant's average compensation for his high 3 years.

(2) ANNUAL BENEFIT.—

(A) IN GENERAL.—For purposes of paragraph (1), the term "annual benefit" means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) under a plan to which employees do not contribute and under which no rollover contributions (as defined in sections 402(a)(5), 403(a)(4), [408(d)(3), and 409(b)(3)(C)] *and 408(d)(3))* are made.

(B) ADJUSTMENT FOR CERTAIN OTHER FORMS OF BENEFIT.—If the benefit under the plan is payable in any form other than the form described in subparagraph (A), or if the employees contribute to the plan or make rollover contributions (as defined in sections 402(a)(5), 403(a)(4), [408(d)(3), and 409(b)(3)(C)] *and 408(d)(3))*, the determinations as to whether the limitation described in paragraph (1) has been satisfied shall be made, in accordance with regulations prescribed by the Secretary, by adjusting such benefit so that it is equivalent to the benefit described in subparagraph (A). For purposes of this subparagraph, any ancillary benefit which is not directly related to retirement income benefits shall not be taken into account; and that portion of any joint and survivor annuity which constitutes a qualified joint and survivor annuity (as defined in section 401(a)(11)(G)(iii)) shall not be taken into account.

(C) ADJUSTMENT TO $90,000 LIMIT WHERE BENEFIT BEGINS BEFORE AGE 62.—If the retirement income benefit under the plan begins before age 62, the determination as to whether the $90,000 limitation set forth in paragraph (1)(A) has been satisfied shall be made, in accordance with regulations prescribed by the Secretary, by [adjusting such benefit so that it is equivalent to such a benefit beginning at age 62] *reducing the limitation of paragraph (1)(A) so that such limitation (as so reduced) equals an annual benefit (beginning when such retirement income benefit begins) which is equivalent to a $90,000 annual benefit beginning at age 62.* The reduction under this subparagraph shall not reduce the limitation of paragraph (1)(A) below—

(i) if the benefit begins at or after age 55, $75,000, or

(ii) if the benefit begins before age 55, the amount which is the equivalent of the $75,000 limitation for age 55.

* * * * * * *

[(D) ADJUSTMENT TO $90,000 LIMITATION WHERE BENEFIT BEGINS AFTER AGE 65.—If the retirement income benefit under the plan begins after age 65, the determination as to whether the $90,000 limitation set forth in paragraph (1)(A) has been satisfied shall be made, in accordance with regulations prescribed by the Secretary, by adjusting such benefit so that it is equivalent to such a benefit beginning at age 65.

(D) ADJUSTMENT TO $90,000 LIMIT WHERE BENEFIT BEGINS AFTER AGE 65.—If the retirement income benefit under the plan begins after age 65, the determination as to whether the $90,000 limitation set forth in paragraph (1)(a) has been satisfied shall be made, in accordance with regulations prescribed by the Secretary, by increasing the limitation of paragraph (1)(A) so that such limitation (as so increased) equals an annual benefit (beginning when such retirement income benefit begins) which is equivalent to a $90,000 annual benefit beginning at age 65.

(E) LIMITATION ON CERTAIN ASSUMPTIONS.—

(i) For purposes of adjusting any benefit *or limitation* under subparagraph (B) or (C), the interest rate assumption shall not be less than the greater of 5 percent or the rate specified in the plan.

(ii) For purposes of adjusting any [benefit] *limitation* under subparagraph (D), the interest rate assumption shall not be greater than the lesser of 5 percent or the rate specified in the plan.

(iii) For purposes of adjusting any benefit *or limitation* under subparagraph (B), (C), or (D), no adjustments under subsection (d)(1) shall be taken into account before the year for which such adjustment first takes effect.

(c) LIMITATION FOR DEFINED CONTRIBUTION PLANS.—

(1) IN GENERAL.—Contributions and other additions with respect to a participant exceed the limitation of this subsection if, when expressed as an annual addition (within the meaning of paragraph (2)) to the participant's account, such annual addition is greater than the lesser of—

(A) $30,000, or

(B) 25 percent of the participant's compensation.

(2) ANNUAL ADDITION.—For purposes of paragraph (1), the term "annual addition" means the sum for any year of—

(A) employer contributions,

(B) the lesser of—

(i) the amount of the employee contributions in excess of 6 percent of his compensation, or

(ii) one-half of the employee contributions, and

(C) forfeitures.

For the purposes of this paragraph, employee contributions under subparagraph (B) are determined without regard to any rollover contributions (as defined in sections 402(a)(5), 403(a)(4), 403(b)(8), **[**405(d)(3), 408(d)(3), and 409(b)(3)(C)**]**, *and 408(d)(3))* without regard to employee contributions to a simplified employee pension allowable as a deduction under section 219(a), and without regard to deductible employee contributions within the meaning of section 72(o)(5).

(3) PARTICIPANT'S COMPENSATION.—For purposes of paragraph (1)—

(A) IN GENERAL.—The term "participant's compensation" means the compensation of the participant from the employer for the year.

(B) SPECIAL RULE FOR SELF-EMPLOYED INDIVIDUALS.—In the case of an employee within the meaning of section 401(c)(1), subparagraph (A) shall be applied by substituting "the participant's earned income (within the meaning of section 401(c)(2) but determined without regard to any exclusion under section 911)" for "compensation of the participant from the employer".

(C) SPECIAL RULES FOR PERMANENT AND TOTAL DISABILITY.—In the case of a participant *in a profit-sharing or stock bonus plan*—

(i) who is permanently and totally disabled (as defined in section 37(e)(3)),

(ii) who is not an officer, owner, or highly compensated, and

(iii) with respect to whom the employer elects, at such time and in such manner as the Secretary may prescribe, to have this subparagraph apply,

the term "participant's compensation" means the compensation the participant would have received for the year if the participant was paid at the rate of compensation paid immediately before becoming permanently and totally disabled. **[**This subparagraph shall only apply if contributions made with respect to such participant are nonforfeitable when made.**]** *This subparagraph shall apply only if contributions made with respect to amounts treated as compensation under this subparagraph are nonforfeitable when made.*

* * * * * * *

(6) SPECIAL LIMITATION FOR EMPLOYEE STOCK OWNERSHIP PLAN.—

(A) In the case of an employee stock ownership plan (as defined in subparagraph (B)), under which no more than one-third of the employer contributions for a year are allocated to the group of employees consisting of officers, shareholders owning more than 10 percent of the employer's stock (determined under subparagraph (B)(iv)), or employees described in subparagraph (B)(iii), the amount described in paragraph (c)(1)(A) (as adjusted for such year pursuant to subsection (d)(1)) for a year with respect to any participant shall be equal to the sum of (i) the amount described in paragraph (c)(1)(A) (as so adjusted) determined without regard to this paragraph and (ii) the lesser of the amount determined under clause (i) or the amount of employer securities contributed, or purchased with cash contributed, to the employee stock ownership plan.

(B) For purposes of this paragraph—

(i) the term "employee stock ownership plan" means an employee stock ownership plan (within the meaning of section 4975(e)(7)) or a tax credit employee stock ownership plan,

(ii) the term "employer securities" has the meaning given to such term by section [409A] *409*,

(iii) an employee described in this clause is any participant whose compensation for a year exceeds an amount equal to twice the amount described in paragraph (c)(1)(A) for such year (as adjusted for such year pursuant to subsection (d)(1)), determined without regard to subparagraph (A) of this paragraph, and

(iv) an individual shall be considered to own more than 10 percent of the employer's stock if, without regard to stock held under the employee stock ownership plan, he owns (after application of section 1563(e)) more than 10 percent of the total combined voting power of all classes of stock entitled to vote or more than 10 percent of the total value of shares of all classes of stock.

(C) In the case of an employee stock ownership plan (as described in section 4975(e)(7)), under which no more than one-third of the employer contributions for a year which are deductible under paragraph (10) of section 404(a) are allocated to the group of employees consisting of officers, shareholders owning more than 10 percent of the employer's stock (determined under subparagraph (B)(iv)), or employees described in subparagraph (B)(iii), the limitations imposed by this section shall not apply to—

(i) forfeitures of employer securities under an employee stock ownership plan (as described in section 4975(e)(7)) if such securities were acquired with the proceeds of a loan (as described in section 404(a)(10)(A)), or

(ii) employer contributions to such an employee stock ownership plan which are deductible under section 404(a)(10)(B) and charged against the participant's account.

[(7) CERTAIN LEVEL PREMIUM ANNUITY CONTRACTS UNDER PLANS BENEFITING OWNER-EMPLOYEES.—Paragraph (1)(B) shall not apply to a contribution described in section 401(e) which is made on behalf of a participant for a year to a plan which benefits an owner-employee (within the meaning of section 401(c)(3)), if—

[(A) the annual addition determined under this section with respect to the participant for such year consists solely of such contribution, and

[(B) the participant is not an active participant at any time during such year in a defined benefit plan maintained by the employer.

For purposes of this section and section 401(e), in the case of a plan which provides contributions or benefits for employees who are not owner-employees, such plan will not be treated as failing to satisfy section 401(a)(4) merely because contributions made on behalf of employees who are not owner-employees are not permitted to exceed the limitations of paragraph (1)(B).]

[(8)] *(7)* CERTAIN CONTRIBUTIONS BY CHURCH PLANS NOT TREATED AS EXCEEDING LIMITS.—

(A) ALTERNATIVE EXCLUSION ALLOWANCE.—Any contribution or addition with respect to any participant, when expressed as an annual addition, which is allocable to the application of section 403(b)(2)(D) to such participant for such year, shall be treated as not exceeding the limitations of paragraph (1).

(B) CONTRIBUTIONS NOT IN EXCESS OF $40,000 ($10,000 PER YEAR).—

(i) IN GENERAL.—Notwithstanding any other provision of this subsection, at the election of a participant who is an employee of a church, a convention or association of churches, including an organization described in section 414(e)(3)(B)(ii), contributions and other additions for an annuity contract or retirement income account described in section 403(b) with respect to such participant, when expressed as an annual addition to such participant's account, shall be treated as not exceeding the limitation of paragraph (1) if such annual addition is not in excess of $10,000.

(ii) $40,000 AGGREGATE LIMITATION.—The total amount of additions with respect to any participant which may be taken into account for purposes of this subparagraph for all years may not exceed $40,000.

(iii) NO ELECTION IF PARAGRAPH (4)(a) ELECTION MADE.—No election may be made under this subparagraph for any year if an election is made under paragraph (4)(A) for such year.

(C) ANNUAL ADDITION.—For purposes of this paragraph, the term "annual addition" has the meaning given such term by paragraph (2).

* * * * * * *

(e) LIMITATION IN CASE OF DEFINED BENEFIT PLAN AND DEFINED CONTRIBUTION PLAN FOR SAME EMPLOYEE.—

(1) IN GENERAL.—* * *

* * * * * * *

(3) DEFINED CONTRIBUTION PLAN FRACTION.—For purposes of this subsection, the defined contribution plan fraction for any year is a fraction—

(A) the numerator of which is the sum of the annual additions to the participant's account as of the close of the year, and

(B) the denominator of which is the sum of the lesser of the following amounts determined for such year and for each prior year of service with the employer:

(i) the product of 1.25, multiplied by the dollar limitation in effect under subsection (c)(1)(A) for such year (determined without regard to subsection (c)(6)), or

(ii) the product of—

(I) 1.4, multiplied by—

(II) the amount which may be taken into account under subsection (c)(1)(B) (or subsection (c)(7) [or (8)], if applicable) with respect to such individual under such plan for such year.

* * * * * * *

(6) SPECIAL TRANSITION RULE FOR DEFINED CONTRIBUTION FRACTION FOR YEARS ENDING AFTER DECEMBER 31, 1982.—

(A) IN GENERAL.—At the election of the plan administrator, in applying paragraph (3) with respect to any year ending after December 31, 1982, the amount taken into account under paragraph (3)(B) with respect to each participant for all years ending before January 1, 1983, shall be an amount equal to the product of—

(i) the amount determined under paragraph (3)(B) (as in effect for the year ending in 1982) for the year ending in 1982, multiplied by

(ii) the transition fraction.

(B) TRANSITION FRACTION.—The term "transition fraction" means a fraction—

(i) the numerator of which is the lesser of—

(I) $51,875, or

(II) 1.4, multiplied by 25 percent of the compensation of the participant for the year ending in 1981, and

(ii) the denominator of which is the lesser of—

(I) $41,500, or

(II) 25 percent of the compensation of the participant for the year ending in 1981.

(C) PLAN MUST HAVE BEEN IN EXISTENCE ON OR BEFORE JULY 1, 1982.—This paragraph shall apply only to plans which were in existence on or before July 1, 1982.

* * * * * * *

(k) SPECIAL RULES.—

(1) DEFINED BENEFIT PLAN AND DEFINED CONTRIBUTION PLAN.—For purposes of this title, the term "defined contribution plan" or "defined benefit plan" means a defined contribution plan (within the meaning of section 414(i)) or a defined benefit plan (within the meaning of section 414(j)), whichever applies, which is—

(A) a plan described in section 401(a) which includes a trust which is exempt from tax under section 501(a),

(B) an annuity plan described in section 403(a),

[(C) a qualified bond purchase plan described in section 405(a),] [(D)] *(C)* an annuity contract described in section 403(b),

[(E)] *(D)* an individual retirement account described in section 408(a),

[(F)] *(E)* an individual retirement annuity described in section 408(b), or

[(G)] *(F)* a simplified employee pension [, or].

[(H) an individual retirement bond described in section 409.]

* * * * * * *

SEC. 416. SPECIAL RULES FOR TOP-HEAVY PLANS.

(a) GENERAL RULE.—* * *

* * * * * * *

(d) NOT MORE THAN $200,000 IN ANNUAL COMPENSATION TAKEN INTO ACCOUNT.—

(1) IN GENERAL.—A plan meets the requirements of this subsection if the annual compensation of each employee taken into account under the plan does not exceed the first $200,000.

(2) COST-OF-LIVING ADJUSTMENTS.—The Secretary shall annually adjust the $200,000 amount contained in paragraph (1) of this subsection and in clause (ii) of subsection (c)(2)(B) *at the same time and* in the same manner as he adjusts the dollar amount contained in section 415(c)(1)(A).

* * * * * * *

(f) COORDINATION WHERE EMPLOYER HAS 2 OR MORE PLANS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section where the employer has 2 or more plans including (but not limited to) regulations to prevent inappropriate omissions or [require] *required* duplication of minimum benefits or contributions.

(g) TOP-HEAVY PLAN DEFINED.—For purposes of this section—

(1) IN GENERAL.—

(A) PLANS NOT REQUIRED TO BE AGGREGATED.—Except as provided in subparagraph (b), the term "top-heavy plan" means, with respect to any plan year—

(i) any defined benefit plan if, as of the determination date, the present value of the cumulative accrued benefits under the plan for key employees exceeds 60 percent of the present value of the cumulative accrued benefits under the plan for all employees, and

(ii) any defined contribution plan if, as of the determination date, the aggregate of the accounts of key employees under such plan exceeds 60 percent of the aggregate of the accounts of all employees under such plan.

(B) AGGREGATED PLANS.—Each plan of an employer required to be included in an aggregation group shall be treated as a top-heavy plan if such group is a top-heavy group.

(2) AGGREGATION.—For purposes of this subsection

(A) AGGREGATION GROUP.—

(i) Required Aggregation.—The term "aggregation group" means—

(I) each plan of the employer in which a key employee is a participant, and

(II) each other plan of the employer which enables any plan described in subclause (I) to meet the requirements of section 401(a)(4) or 410.

(ii) Permissive aggregation.—The employer may treat any plan not required to be included in an aggregation group under clause (i) as being part of such group if such group would continue to meet the requirements of sections 401(a)(4) and 410 with such plan being taken into account.

(B) Top-heavy group.—The term "top-heavy group" means any aggregation group if—

(i) the sum (as of the determination date) of—

(I) the present value of the cumulative accrued benefits for key employees under all defined benefit plans included in such group, and

(II) the aggregate of the accounts of key employees under all defined contribution plans included in such group,

(ii) exceeds 60 percent of a similar sum determined for all employees.

(3) Distributions during last 5 years taken into account.—For purposes of determining—

(A) the present value of the cumulative accrued benefit for any employee, or

(B) the amount of the account of any employee,

such present value or amount shall be increased by the aggregate distributions made with respect to such employee under the plan during the 5-year period ending on the determination date. *The preceding sentence shall also apply to distributions under a terminated plan which if it had not been terminated would have been required to be included in an aggregation group.*

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(i) Definitions.—For purposes of this section—

(1) Key employee.—

(A) In general.—The term "key employee" means [any participant in an employer plan] *an employee* who, at any time during the plan year or any of the 4 preceding plan years, is—

(i) an officer of the employer,

[(ii) 1 of the 10 employees owning (or considered as owning within the meaning of section 318) the largest interests in the employer,]

(ii) 1 of the 10 employees having annual compensation from the employer of more than the limitation in effect under section 415(c)(1)(A) and owning (or considered as owning within the meaning of section 318) the largest interests in the employer,

(iii) a 5-percent owner of the employer, or

(iv) a 1-percent owner of the employer having an annual compensation from the employer of more than $150,000.

For purposes of clause (i), no more than 50 employees (or, if less, the greater of 3 or 10 percent of the employees) shall be treated as officers. *For purposes of clause (ii), if 2 employees have the same interest in the employer, the employee having greater annual compensation from the employer shall be treated as having a larger interest.*

(B) PERCENTAGE OWNERS.—

(i) 5-PERCENT OWNER.—For purposes of this paragraph, the term "5-percent owner" means—

(I) if the employer is a corporation, any person who owns (or is considered as owning within the meaning of section 318) more than 5 percent of the outstanding stock of the corporation or stock possessing more than 5 percent of the total combined voting power of all stock of the corporation, or

(II) if the employer is not a corporation, any person who owns more than 5 percent of the capital or profits interest in the employer.

(ii) 1-PERCENT OWNER.—For purposes of this paragraph, the term "1-percent owner" means any person who would be described in clause (i) if "1 percent" were substituted for "5 percent" each place it appears in clause (i).

(iii) CONSTRUCTIVE OWNERSHIP RULES.—For purposes of this subparagraph and subparagraph [(A)(ii)(II)] *(A)(ii)*—

(I) subparagraph (C) of section 318(a)(2) shall be applied by substituting "5 percent" for "50 percent", and

(II) in the case of any employer which is not a corporation, ownership in such employer shall be determined in accordance with regulations prescribed by the Secretary which shall be based on principles similar to the principles of section 318 (as modified by subclause (I)).

(C) AGGREGATION RULES DO NOT APPLY FOR PURPOSES OF DETERMING [5-PERCENT OR 1-PERCENT OWNERS] *OWNERSHIP IN THE EMPLOYER*.—The rules of subsections (b), (c), and (m) of section 414 shall not apply for purposes of determining ownership in the employer.

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PART II—CERTAIN STOCK OPTIONS

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SEC. 422A. INCENTIVE STOCK OPTIONS.

(a) IN GENERAL.— * * *

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(c) SPECIAL RULES.—

(1) GOOD FAITH EFFORTS TO VALUE STOCK.— * * *

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(9) SPECIAL RULE WHEN DISABLED.—For purposes of subsection (a)(2), in the case of an employee who is disabled (within the mean of section [105(d)(4)),] *37(e)(3)),* the 3-month period of subsection (a)(2) shall be 1 year.

Subchapter E—Accounting Periods and Methods of Accounting

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PART I—ACCOUNTING PERIODS

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SEC. 441. PERIOD FOR COMPUTATION OF TAXABLE INCOME.

(a) COMPUTATION OF TAXABLE INCOME—* * *

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(f) ELECTION OF YEAR CONSISTING OF 52–53 WEEKS.—

(1) GENERAL RULE.—A taxpayer who, in keeping his books, regularly computes his income on the basis of an annual period which varies from 52 to 53 weeks and ends always on the same day of the week and ends always—

(A) on whatever date such same day of the week last occurs in a calendar month, or

(B) on whatever date such same day of the week falls which is nearest to the last day of a calendar month,

may (in accordance with the regulations prescribed under paragraph (3)) elect to compute his taxable income for purposes of this subtitle on the basis of such annual period. This paragraph shall apply to taxable years ending after the date of the enactment of this title.

(2) SPECIAL RULES FOR 52–53 WEEK YEAR.—

(A) EFFECTIVE DATES.—In any case in which the effective date or the applicability of any provision of this title is expressed in terms of taxable years beginning, including, or ending with reference to a specified date which is the first or last day of a month, a taxable year described in paragraph (1) shall (except for purposes of the computation under section [21] *15*) be treated—

(i) as beginning with the first day of the calendar month beginning nearest to the first day of such taxable year, or

(ii) as ending with the last day of the calendar month ending nearest to the last day of such taxable year,

as the case may be

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PART II--METHODS OF ACCOUNTING

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Subpart B—Taxable Year for Which Items of Gross Income Included

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SEC. 453. INSTALLMENT METHOD.

(a) GENERAL RULE.—* * *

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(g) SALE OF DEPRECIABLE PROPERTY TO [SPOUSE OR] 80-PERCENT OWNED ENTITY.—

(1) IN GENERAL.—In the case of an installment sale of depreciable property between related persons within the meaning of section 1239(b), subsection (a) shall not apply, and, for purposes of this title, all payments to be received shall be deemed received in the year of the disposition.

(2) EXCEPTION WHERE TAX AVIODANCE NOT A PRINCIPAL PURPOSE.—Paragraph (1) shall not apply if it is established to the satisfaction of the Secretary that the disposition did not have as one of its principal purposes the avoidance of Federal income tax.

(h) USE OF INSTALLMENT METHOD BY SHAREHOLDERS IN SECTION 337 LIQUIDATIONS.—

(1) RECEIPT OF OBLIGATIONS NOT TREATED AS RECEIPT OF PAYMENT.—

(A) IN GENERAL.—If, in connection with a liquidation to which section 337 applies, in a transaction to which section 331 applies the shareholder receives (in exchange for the shareholder's stock) an installment obligation acquired in respect of a sale or exchange by the corporation during the 12-month period set forth in section 337(a), then, for purposes of this section, the receipt of payments under such obligation (but not the receipt of such obligation) by the shareholder shall be treated as the receipt of payment for the stock.

(B) OBLIGATIONS ATTRIBUTABLE TO SALE OF INVENTORY MUST RESULT FROM BULK SALE.—Subparagraph (A) shall not apply to an installment obligation described in section 337(b)(1)(B) unless such obligation is also described in section 337(b)(2)(B).

(C) SPECIAL RULE WHERE OBLIGOR AND SHAREHOLDER ARE RELATED PERSONS.—If the obligor of any installment obligation and the shareholder are *married to each other or are* related persons (within the meaning of section 1239(b)), to the extent such installment obligation is attributable to the deposition by the corporation of depreciable property—

(i) subparagraph (A) shall not apply to such obligation, and

(ii) for purposes of this title, all payments to be received by the shareholder shall be deemed received in the year the shareholder receives the obligation.

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SEC. 453B. GAIN OR LOSS ON DISPOSITION OF INSTALLMENT OBLIGATIONS.

(a) General Rule.—* * *

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(d) Effect of Distribution in Certain Liquidations.—

(1) Liquidations to which section 332 applies.—If—

(A) an installment obligation is distributed in a liquidation to which section 332 (relating to complete liquidations of subsidiaries) applies, and

(B) the basis of such obligation in the hands of the distributee is determined under section 334(b)(1),

then no gain or loss with respect to the distribution of such obligation shall be recognized by the distributing corporation.

(2) Liquidations to which section 337 applies.—If—

(A) an installment obligation is distributed by a corporation in the course of a liquidation, and

(B) under section 337 (relating to gain or loss on sales or exchanges in connection with certain liquidations) no gain or loss would have been recognized to the corporation if the corporation had sold or exchanged such installment obligation on the day of such distribution,

then no gain or loss shall be recognized to such corporation by reason of such distribution. The preceding sentence shall not apply to the extent that under subsection (a) gain to the distributing corporation would be considered as gain to which section 341(f), 617(d)(1), 1245(a), 1250(a), **[**1251(c),**]** 1252(a), or 1254(a) applies. In the case of any installment obligation which would have met the requirements of subparagraphs (A) and (B) of the first sentence of this paragraph but for section 337(f), gain shall be recognized to such corporation by reason of such distribution only to the extent gain would have been recognized under section 337(f) if such corporation had sold or exchanged such installment obligation on the date of such distribution.

(e) Life Insurance Companies.—

(1) In general.—In the case of a disposition of an installment obligation by any person other than a life insurance company (as defined in section **[**801(a)**]** *816(a))* to such an insurance company or to a partnership of which such an insurance company is a partner, no provision of this subtitle providing for the nonrecognition of gain shall apply with respect to any gain resulting under subsection (a). If a corporation which is a life insurance company for the taxable year was (for the preceding taxable year) a corporation which was not a life insurance company, such corporation shall, for purposes of this subsection and subsection (a), be treated as having transferred to a life insurance company, on the last day of the preceding taxable year, all installment obligations which it held on such last day. A partnership of which a life insurance company becomes a partner shall, for purposes of this subsection and subsection (a), be treated as having transferred to a life insurance company, on the last day of the preceding taxable year of such part-

nership, all installment obligations which it holds at the time such insurance company becomes a partner.

[(2) SPECIAL RULE WHERE LIFE INSURANCE COMPANY ELECTS TO TREAT INCOME AS INVESTMENT INCOME.—Paragraph (1) shall not apply to any transfer or deemed transfer of an installment obligation if the life insurance company elects (at such time and in such manner as the Secretary may by regulations prescribe) to determine its life insurance company taxable income—

[(A) by returning the income on such installment obligation under the installment method prescribed in section 453, and

[(B) if such income would not otherwise be returnable as an item referred to in section 804(b) or as long-term capital gain, as if the income on such obligations were income specified in section 804(b).]

(2) SPECIAL RULE WHERE LIFE INSURANCE COMPANY ELECTS TO TREAT INCOME AS NOT RELATED TO INSURANCE BUSINESS.—Paragraph (1) shall not apply to any transfer or deemed transfer of an installment obligation if the life insurance company elects (at such time and in such manner as the Secretary may by regulations prescribe) to determine its life insurance company taxable income—

(A) by returning the income on such installment obligation under the installment method prescribed in section 453, and

(B) as if such income were an item attributable to a noninsurance business (as defined in section 806(c)(3)).

* * * * * * *

(g) TRANSFERS BETWEEN SPOUSES OR INCIDENT TO DIVORCE.—In the case of any transfer described in subsection (a) of section 1041—

(1) subsection (a) shall not apply, and

(2) the same tax treatment with respect to the transferred installment obligation shall apply to the transferee as would have applied to the transferor.

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SEC. 457. DEFERRED COMPENSATION PLANS WITH RESPECT TO SERVICE FOR STATE AND LOCAL GOVERNMENTS.

(a) YEAR OF INCLUSION IN GROSS INCOME.—* * *

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(e) TAX TREATMENT OF PARTICIPANTS WHERE PLAN OR ARRANGEMENT OF STATE IS NOT ELIGIBLE.—

(1) IN GENERAL.—In the case of a plan of a State providing for a deferral of compensation, if such plan is not an eligible State deferred compensation plan, then—

(A) the compensation shall be included in the gross income of the participant or beneficiary for the first taxable year in which there is no substantial risk of forfeiture of the rights to such compensation, and

(B) the tax treatment of any amount made available under the plan to a participant or beneficiary shall be determined under section 72 (relating to annuities, etc.).

(2) EXCEPTIONS.—Paragraph (1) shall not apply to—

(A) a plan described in section 401(a) which includes a trust exempt from tax under section 501(a),

(B) an annuity plan or contract described in section 403,

[(C) a qualified bond purchase plan described in section 405(a),]

[(D)] *(C)* that portion of any plan which consists of a transfer of property described in section 83, and

[(E)] *(D)* that portion of any plan which consists of a trust to which section 402(b) applies.

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Subpart C—Taxable Year for Which Deductions Taken

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SEC. 465. DEDUCTIONS LIMITED TO AMOUNT AT RISK

(a) LIMITATION TO AMOUNT AT RISK.—

(1) IN GENERAL.—In the case of—

(A) an individual, and

(B) a *C* corporation with respect to which the stock ownership requirement of paragraph (2) of section 542(a) is met,

engaged in an activity to which this section applies, any loss from such activity for the taxable year shall be allowed only to the extent of the aggregate amount with respect to which the taxpayer is at risk (within the meaning of subsection (b)) for such activity at the close of the taxable year.

* * * * * * *

(b) AMOUNTS CONSIDERED AT RISK.—

(1) IN GENERAL.—For purposes of this section, a taxpayer shall be considered at risk for an activity with respect to amounts including—

(A) the amount of money and the adjusted basis of other property contributed by the taxpayer to the activity, and

(B) amounts borrowed with respect to such activity (as determined under paragraph (2)).

(2) BORROWED AMOUNTS.—For purposes of this section, a taxpayer shall be considered at risk with respect to amounts borrowed for use in an activity to the extent that he—

(A) is personally liable for the repayment of such amounts, or

(B) has pledged property, other than property used in such activity, as security for such borrowed amount (to the extent of the net fair market value of the taxpayer's interest in such property).

No property shall be taken into account as security if such property is directly or indirectly financed by indebtedness which is secured by property described in paragraph (1).

[(3) CERTAIN BORROWED AMOUNTS EXCLUDED.—For purposes of paragraph (1)(B), amounts borrowed shall not be considered to be at risk with respect to an activity if such amounts are borrowed from any person who—

[(A) has an interest (other than an interest as a creditor) in such activity, or

[(B) has a relationship to the taxpayer specified within any one of the paragraphs of section 267(b).]

(3) CERTAIN BORROWED AMOUNT EXCLUDED.—

(A) IN GENERAL.—For purposes of paragraph (1)(B), amounts borrowed shall not be considered to be at risk with respect to an activity if such amounts are borrowed from any person who has an interest in such activity.

(B) EXCEPTIONS.—

(i) INTEREST AS CREDITOR.—Subparagraph (A) shall not apply to an interest as a creditor in the activity.

(ii) INTEREST AS SHAREHOLDER WITH RESPECT TO AMOUNTS BORROWED BY CORPORATION.—In the case of amounts borrowed by a corporation from a shareholder, subparagraph (A) shall not apply to an interest as a shareholder.

(c) ACTIVITIES TO WHICH SECTION APPLIES.—

(1) TYPES OF ACTIVITIES.—This section applies to any taxpayer engaged in the activity of—

(A) holding, producing, or distributing motion picture films or video tapes,

(B) farming (as defined in section 464(e)),

(C) leasing any section 1245 property (as defined in section 1245(a)(3)),

(D) exploring for, or exploiting, oil and gas resources, or

(E) exploring for, or exploiting, geothermal deposits (as defined in section 613(e)(3)) as a trade or business or for the production of income.

[(2) SEPARATE ACTIVITIES.—For purposes of this section, a taxpayer's activity with respect to each—

[(A) film or video tape,

[(B) section 1245 property which is leased or held for leasing,

[(C) farm,

[(D) oil and gas property (as defined under section 614), or

[(E) geothermal property (as defined under section 614) shall be treated as a separate activity. A partner's interest in a partnership or a shareholder's interest in an S corporation shall be treated as a single activity to the extent that the partnership or the S corporation is engaged in activities described in any subparagraph of this paragraph.]

(2) SEPARATE ACTIVITIES.—For purposes of this section—

(A) IN GENERAL.—Except as provided in subparagraph (B), a taxpayer's activity with respect to each—

(i) film or video tape,

(ii) section 1245 property which is leased or held for leasing,

(iii) farm,

(iv) oil and gas property (as defined under section 614), or

(v) geothermal property (as defined under section 614),

shall be treated as a separate activity.

(B) Aggregation of activities where taxpayer actively participates in management of each activity.—

(i) In general.—All activities which are described in both subparagraph (A) and clause (ii) of this subparagraph and which constitute part or all of a trade or business shall be treated as 1 activity.

(ii) Activities.—An activity is described in this clause if—

(I) the taxpayer actively participates in the management of such activity, or

(II) such activity is carried on by a partnership or an S corporation and 65 percent or more of the losses for the taxable year is allocable to persons who actively participate in the management of such activity.

(3) Extension to other activities.—

(A) In general.—In the case of taxable years beginning after December 31, 1978, this section also applies to each activity—

(i) engaged in by the taxpayer in carrying on a trade or business or for the production of income, and

(ii) which is not described in paragraph (1).

(B) Aggregation of activities where taxpayer actively participates in management of trade or business.—Except as provided in subparagraph (C), for purposes of this section, activities described in subparagraph (A) which constitute a trade or business shall be treated as one activity if—

(i) the taxpayer actively participates in the management of such trade or business, or

(ii) such trade or business is carried on by a partnership or an S corporation and 65 percent or more of the losses for the taxable year is allocable to persons who actively participate in the management of the trade or business.

(C) Aggregation or separation of activities under regulations.—The Secretary shall prescribe regulations under which activities described in subparagraph (A) shall be aggregated or treated as separate activities.

(D) Exclusions for real property.—In the case of activities described in subparagraph (A), the holding of real property (other than mineral property) shall be treated as a separate activity, and subsection (a) shall not apply to losses from such activity. For purposes of the preceding sentence, personal property and services which are incidental to making real property available as living accommodations shall be treated as part of the activity of holding such real property.

(E) Applications of subsection (b)(3).—In the case of an activity described in subparagraph (A), subsection (b)(3) shall apply only to the extent provided in regulations prescribed by the Secretary.

(4) Exclusion for certain equipment leasing by closely-held corporations.—

(A) IN GENERAL.—In the case of a corporation described in subsection (a)(1)(B) actively engaged in equipment leasing—

(i) the activity of equipment leasing shall be treated as a separate activity, and

(ii) subsection (a) shall not apply to losses from such activity.

(B) 50-PERCENT GROSS RECEIPTS TEST.—For purposes of subparagraph (A), a corporation shall not be considered to be actively engaged in equipment leasing unless 50 percent or more of the gross receipts of the corporation for the taxable year is attributable, under regulations prescribed by the Secretary, to equipment leasing.

(C) COMPONENT MEMBERS OF CONTROLLED GROUP TESTED AS A SINGLE CORPORATION.—For purposes of subparagraph (A), the component members of a controlled group of corporations shall be treated as a single corporation.

(5) WAIVER OF CONTROLLED GROUP RULE WHERE THERE IS SUBSTANTIAL LEASING ACTIVITY.—

(A) IN GENERAL.—In the case of the component members of a qualified leasing group, paragraph (4) shall be applied—

(i) by substituting "80 percent" for "50 percent" in subparagraph (B) thereof, and

(ii) as if paragraph (4) did not include subparagraph (C) thereof.

(B) QUALIFIED LEASING GROUP.—For purposes of this paragraph, the term "qualified leasing group" means a controlled group of corporations which, for the taxable year and each of the 2 immediately preceding taxable years, satisfied each of the following 3 requirements:

(i) AT LEAST 3 EMPLOYEES.—During the entire year, the group had at least 3 fulltime employees substantially all of the services of whom were services directly related to the equipment leasing activity of the qualified leasing members.

(ii) AT LEAST 5 SEPARATE LEASING TRANSACTIONS.—During the year, the qualified leasing members in the aggregate entered into at least 5 separate equipment leasing transactions.

(iii) AT LEAST $1,000,000 EQUIPMENT LEASING RECEIPTS.—During the year, the qualified leasing members in the aggregate had at least $1,000,000 in gross receipts from equipment leasing.

The term "qualified leasing group" does not include any controlled group of corporations to which, without regard to this paragraph, paragraph (4) applies.

(C) QUALIFIED LEASING MEMBER.—For purposes of this paragraph, a corporation shall be treated as a qualified leasing member for the taxable year only if for each of the taxable years referred to in subparagraph (B)—

(i) it is a component member of the controlled group of corporations, and

(ii) it meets the requirements of paragraph (4)(B) (as modified subparagraph (A)(i) of this paragraph).

(6) **Definitions relating to paragraphs (4) and (5).**—For purposes of paragraphs (4) and (5)—

(A) **Equipment leasing.**—The term "equipment leasing" means—

(i) the leasing of equipment which is section 1245 property, and

(ii) the purchasing, servicing, and selling of such equipment.

(B) **Leasing of master sound recordings, etc., excluded.**—The term "equipment leasing" does not include the leasing of master sound recordings, and other similar contractual arrangements with respect to tangible or intangible assets associated with literary, artistic, or musical properties.

(C) **Controlled group of corporations; component member.**—The terms "controlled group of corporations" and "component member" have the same meanings as when used in section 1563. The determination of the taxable years taken into account with respect to any controlled group of corporations shall be made in a manner consistent with the manner set fourth in section 1563.

(7) Exclusion of active businesses of qualified C corporations.—

(A) In general.—In the case of a taxpayer which is a qualified C corporation—

(i) each qualifying business carried on by such taxpayer (or carried on by a partnership of which such taxpayer is a partner) shall be treated as a separate activity, and

(ii) subsection (a) shall not apply to losses from such business.

(B) Qualified C corporation.—For purposes of subparagraph (A), the term "qualified C corporation" means any corporation described in subparagraph (B) of subsection (a)(1) which is not—

(i) a personal holding company (as defined in section 542(a)),

(ii) a foreign personal holding company (as defined in section 552(a)), or

(iii) a personal service corporation (as defined in section 269A(b) but determined by substituting "5 percent" for "10 percent" in section 269A(b)(2)).

(C) Qualifying business.—For purposes of this paragraph, the term "qualifying business" means any business if—

(i) during the entire 12-month period ending on the last day of the taxable year, such corporation had at least 1 full-time employee substantially all of the services of whom were in the active management of such business,

(ii) during the entire 12-month period ending on the last day of the taxable year, such corporation had at

least 3 full-time, non-owner employees substantially all of the services of whom were services directly related to such business,

(iii) the amount of the deductions which are allowable to the taxpayer solely by reason of sections 162 and 404 for the taxable year exceeds 15 of the gross income from such business for such year, and

(iv) such business is not an excluded business.

(D) SPECIAL RULES FOR APPLICATION OF SUBPARAGRAPH (C).—

(i) PARTNERSHIPS HELD PRIMARILY BY CORPORATIONS.—In the case of a business of a partnership of which the taxpayer is a partner, the requirements of clause (ii) of subparagraph (C) are met if (and only if)—

(I) at least 50 percent of the profits interests in the partnership are held by partners which are corporations, and

(II) the number of full-time nonowner employees of the partnership (or the taxpayer) substantially all of the services of whom are services directly related to such business equals or exceeds 3 times the number of corporate partners of such partnership.

(ii) DEDUCTION FOR OWNER EMPLOYEE COMPENSATION NOT TAKEN INTO ACCOUNT.—For purposes of clause (iii) of subparagraph (C), there shall not be taken into account any deduction in respect of compensation for personal services rendered by any employee (other than a non-owner employee) of the taxpayer or any member of such employee's family (within the meaning of section 318(a)(1)).

(iii) SPECIAL RULE FOR BANKS.—For purposes of clause (iii) of subparagraph (C), in the case of a bank (as defined in section 581) or a financial institution to which section 591 applies—

(I) gross income shall be determined without regard to the exclusion of interest from gross income under section 103, and

(II) in addition to the deductions described in such clause, there shall also be taken into account the amount of the deductions which are allowable for amounts paid or credited to the accounts of depositors or holders of accounts as dividends or interest on their deposits or withdrawable accounts under section 163 or 591.

(iv) SPECIAL RULE FOR LIFE INSURANCE COMPANIES.—

(I) IN GENERAL.—Clause (iii) of subparagraph (C) shall not apply to any insurance business of a qualified life insurance company.

(II) INSURANCE BUSINESS.—For purposes of subclause (I), the term "insurance business" means any business which is not a noninsurance business (within the meaning of section 806(c)(3)).

(III) QUALIFIED LIFE INSURANCE COMPANY.—For purposes of subclause (I), the term "qualified life insurance company" means any company which would be a life insurance company as defined in section 816 if unearned premiums were not taken into account under subsections (a)(2) and (c) of section 816.

(E) DEFINITIONS.—For purposes of this section—

(i) NONOWNER EMPLOYEE.—The term "nonowner employee" means any employee who does not own, at any time during the taxable year, more than 5 percent in value of the outstanding stock of the taxpayer. For purposes of the preceding sentence, section 318 shall apply, except that "5 percent" shall be substituted for "50 percent" in section 318(a)(2)(C).

(ii) EXCLUDED BUSINESS.—The term "excluded business" means—

(I) equipment leasing (as defined in paragraph (6)), and

(II) any business involving the use, exploitation, sale, lease, or other disposition of master sound recordings, motion picture films, video tapes, or tangible or intangible assets associated with literary, artistic, musical, or similar properties.

(iii) SPECIAL RULES RELATING TO COMMUNICATIONS INDUSTRY, ETC.—

(I) PROPERTY NOT EXCLUDED WHERE TAXPAYER COMPLETELY AT RISK.—Subclause (II) of clause (ii) shall not apply to any property if the taxpayer is completely at risk with respect to all amounts expended in connection with the acquisition or creation of such property.

(II) CERTAIN LICENSED BUSINESSES NOT EXCLUDED.—For purposes of subclause (II) of clause (ii), the provision of radio, television, cable television, or similar services pursuant to a license or franchise granted by the Federal Communications Commission or any other Federal, State, or local authority shall not constitute an excluded business by reason of such subclause.

(F) AFFILIATED GROUP TREATED AS 1 TAXPAYER.—For purposes of this paragraph—

(i) IN GENERAL.—Except as provided in clause (iii), the component members of an affiliated group of corporations shall be treated as a single taxpayer.

(ii) AFFILIATED GROUP OF CORPORATIONS.—The term "affiliated group of corporations" means an affiliated group (as defined in section 1504(a)) which files or is required to file consolidated income tax returns.

(iii) COMPONENT MEMBER.—

(I) IN GENERAL.—The term "component member" means an includible corporation (as defined in section 1504) which is a member of the affiliated group.

(II) PERSONAL HOLDING COMPANIES, ETC., NOT TREATED AS COMPONENT MEMBERS.—The term "component member" does not include any corporation described in clause (i), (ii), or (iii) of subparagraph (B).

(G) SPECIAL RULE FOR DETERMINING WHETHER A DOMESTIC CORPORATION IS A PERSONAL HOLDING COMPANY.—For purposes of determining whether a domestic corporation is a personal holding company for purposes of this paragraph, if—

(i) such domestic corporation owns directly stock of a foreign corporation meeting the ownership requirements of section 1504(a)(1), and

(ii) the income of such foreign corporation meets the requirements of section 954(b)(3)(A) (that less than 10 percent of gross income of a corporation be foreign base company income),

then the dividends from such foreign corporation shall not be treated as personal holding company income (as defined in section 543(a)) of such domestic corporation and the employees and their activities (and the income and expenses) of such foreign corporation shall be treated as the employees and activities (and income and expenses) of such domestic corporation.

Subchapter F—Exempt Organizations

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PART II—PRIVATE FOUNDATIONS

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SEC. 507. TERMINATION OF PRIVATE FOUNDATION STATUS.

(a) GENERAL RULE.—* * *

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(d) AGGREGATE TAX BENEFIT.—

(1) IN GENERAL.—For purposes of subsection (c), the aggregate tax benefit resulting from the section 501(c)(3) status of any private foundation is the sum of—

(A) the aggregate increases in tax under chapters 1, 11, and 12 (or the corresponding provisions of prior law) which would have been imposed with respect to all substantial contributors to the foundation if deductions for all contributions made by such contributors to the foundation after February 28, 1913, had been disallowed, and

(B) the aggregate increases in tax under chapter 1 (or the corresponding provisions of prior law) which would have been imposed with respect to the income of the private foundation for taxable years beginning after December 31, 1912, if (i) it had not been exempt from tax under section 501(a) (or the corresponding provisions of prior law), and (ii) in the case of a trust, deductions under section 642(c) (or the corresponding provisions of prior law had been limited to 20 percent of the taxable income of the trust (computed without the benefit of section 642(c) but with the benefit of section 170(b)(1)(A)), and

(C) interest on the increases in tax determined under subparagraphs (A) and (B) from the first date on which each such increase would have been due and payable to the date on which the organization ceases to be a private foundation.

(2) SUBSTANTIAL CONTRIBUTOR.—

(A) DEFINITION.—For purposes of paragraph (1), the term "substantial contributor" means any person who contributed or bequeathed an aggregate amount of more than $5,000 to the private foundation, if such amount is more than 2 percent of the total contributions and bequests received by the foundation before the close of the taxable year of the foundation in which the contribution or bequest is received by the foundation from such person. In the case of a trust, the term "substantial contributor" also means the creator of the trust.

(B) SPECIAL RULES.—For purposes of subparagraph (A)—

(i) each contribution or bequest shall be valued at fair market value on the date it was received,

(ii) in the case of a foundation which is in existence on October 9, 1969, all contributions and bequests received on or before such date shall be treated (except for purposes of clause (i)) as if received on such date,

(iii) an individual shall be treated as making all contributions and bequests made by his spouse, and

(iv) any person who is a substantial contributor on any date shall remain a substantial contributor for all subsequent periods.

(C) PERSON CEASES TO BE SUBSTANTIAL CONTRIBUTOR IN CERTAIN CASES.—

(i) IN GENERAL.—A person shall cease to be treated as a substantial contributor with respect to any private foundation as of the close of any taxable year of such foundation if—

(I) during the 10-year period ending at the close of such taxable year such person (and all related persons) have not made any contribution to such private foundation,

(II) at no time during such 10-year period was such person (or any related person) a foundation manager of such private foundation, and

(III) the aggregate contributions made by such person (and related persons) are determined by the Secretary to be insignificant when compared to the aggregate amount of contributions to such fundation by one other person.

For purposes of subclause (III), appreciation on contributions while held by the foundation shall be taken into account.

(ii) RELATED PERSON.—For purposes of clause (i), the term "related person" means, with respect to any

person, any other person who would be a disqualified person (within the meaning of section 4946) by reason of his relationship to such person. In the case of a contributor which is a corporation, the term also includes any officer or director of such corporation.

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PART III—TAXATION OF BUSINESS INCOME OF CERTAIN EXEMPT ORGANIZATIONS

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SEC. 514. UNRELATED DEBT-FINANCING INCOME.

(a) UNRELATED DEBT-FINANCED INCOME AND DEDUCTIONS.—* * *

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(c) ACQUISITION INDEBTEDNESS.—

(1) GENERAL RULE.—* * *

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(9) REAL PROPERTY ACQUIRED BY QUALIFIED TRUST.—For purposes of this section—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term "acquisition indebtedness" does not include indebtedness incurred by a qualified trust in acquiring or improving any real property.

(B) EXCEPTIONS.—The provisions of subparagraph (A) shall not apply in any case in which—

(i) the acquisition price is not a fixed amount determined as of the date of acquisition;

(ii) the amount of any indebtedness or any other amount payable with respect to such indebtedness, or the time for making any payment of any such amount, is dependent, in whole or in part, upon any revenue, income, or profits derived from such real property;

(iii) the real property is at any time after the acquisition leased by the qualified trust to the person selling such property to such trust or to any person who bears a relationship described in section 267(b) *or 707(b)* to such person;

(iv) the real property is acquired from, or is at any time after the acquisition leased by the qualified trust to, any person who—

(I) bears a relationship which is described in section 4975(e)(2)(C), (E), or (G) to any plan with respect to which such trust was formed, or

(II) bears a relationship which is described in section 4975(e)(2)(F) or (H) to any person described in subclause (I); or

(v) any person described in clause (iii) or (iv) provides the qualified trust with nonrecourse financing in connection with such transaction and such debt—

(I) is subordinate to any other indebtedness on such property, or

(II) bears interest at a rate which is significantly less than the rate available from any person not described in clause (iii) or (iv) at the time such indebtedness is incurred.

(C) Qualified trust.—For purposes of this paragraph, the term "qualified trust" means any trust which constitutes a qualified trust under section 401.

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PART VI—POLITICAL ORGANIZATIONS

Sec. 527. Political organizations.

SEC. 527. POLITICAL ORGANIZATIONS.

(a) General Rule.—* * *

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(g) Treatment of Newsletter Funds.—

(1) In general.—For purposes of this section, a fund established and maintained by an individual who holds, has been elected to, or is a candidate (within the meaning of section **[**41(c)(2)**]** *24(c)(2)*) for nomination or election to, any Federal, State, or local elective public office to use by such individual exclusively for the preparation and circulation of such individual's newsletter shall, except as provided in paragraph (2), be treated as if such fund constituted a political organization.

(2) Additional modifications.—In the case of any fund described in paragraph (1)—

(A) the exempt function shall be only be only the preparation and circulation of the newsletter, and

(B) the specific deduction provided by subsection (c)(2)(A) shall not be allowed.

(h) Special Rule for Principal Campaign Committees.—

(1) In general.—In the case of a political organization which is a principal campaign committee, paragraph (1) of subsection (b) shall be applied by substituting "the appropriate rates" for "the highest rate".

(2) Principal campaign committee defined.—

(A) In general.—For purposes of this subsection, the term "principal campaign committee" means the political committee designated by a candidate for Congress as his principal campaign committee for purposes of—

(i) section 302(e) of the Federal Election Campaign Act of 1971 (2 U.S.C. 432(e)), and

(ii) this subsection.

(B) Designation.—A candidate may have only 1 designation in effect under subparagraph (A)(ii) at any time and such designation—

(i) shall be made at such time and in such manner as the Secretary may prescribe by regulations, and

(ii) once made, may be revoked only with the consent of the Secretary.

Nothing in this subsection shall be construed to require any designation where there is only one political committee with respect to a candidate.

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Subchapter G—Corporations Used to Avoid Income Tax on Shareholders

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PART I—CORPORATIONS IMPROPERLY ACCUMULATING SURPLUS

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SEC. 535. ACCUMULATED TAXABLE INCOME.

(a) DEFINITION—* * *

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(d) INCOME DISTRIBUTED TO UNITED STATES-OWNED FOREIGN CORPORATION RETAINS UNITED STATES CONNECTION.—

(1) IN GENERAL.—For purposes of this part, if more than 10 percent of the earnings and profits of any foreign corporation for any taxable year—

(A) is derived from sources within the United States, or

(B) is effectively connected with the conduct of a trade or business within the United States,

any distribution out of such earnings and profits (and any interest payment) received (directly or through 1 or more other entities) by a United States-owned foreign corporation shall be treated and derived by such corporation from sources within the United States.

(2) UNITED STATES-OWNED FOREIGN CORPORATION.—For purposes of paragraph (1), the term "United States-owned foreign corporation" means any corporation 50 percent or more of the total combined voting power of all classes of stock entitled to vote, or the total value of all classes of stock, was held directly (or indirectly through applying paragraphs (2) and (3) of section 958(a) and paragraph (4) of section 318(a)) by United States persons (as defined in section 7701(a)(30)).

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PART II—PERSONAL HOLDING COMPANIES

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SEC. 542. DEFINITION OF PERSONAL HOLDING COMPANY.

(a) GENERAL RULE.—* * *

(b) CORPORATIONS FILING CONSOLIDATED RETURNS.—

(1) GENERAL RULE.—In the case of an affiliated group of corporations filing or required to file a consolidated return under section 1501 for any taxable year, the adjusted ordinary gross income requirement of subsection (a)(1) of this section shall, except as provided in paragraphs (2) and (3), be applied for such year with respect to the consolidated adjusted ordinary

gross income and the consolidated personal holding company income of the affiliated group. No member of such an affiliated group shall be considered to meet such adjusted ordinary gross income requirement unless the affiliated group meets such requirement.

(2) INELIGIBLE AFFILIATED GROUP.—Paragraph (1) shall not apply to an affiliated group of corporations if—

(A) any member of the affiliated group of corporations (including the common parent corporation) derived 10 percent or more of its adjusted ordinary gross income for the taxable year from sources outside the affiliated group, and

(B) 80 percent or more of the amount described in subparagraph (A) consists of personal holding company income (as defined in section 543).

For purposes of this paragraph, section 543 shall be applied as if the amount described in subparagraph (A) were the adjusted ordinary gross income of the corporation.

(3) EXCLUDED CORPORATIONS.—Paragraph (1) shall not apply to an affiliated group of corporations if any member of the affiliated group (including the common parent corporation) is a corporation excluded from the definition of personal holding company under subsection (c).

(4) CERTAIN DIVIDEND INCOME RECEIVED BY A COMMON PARENT.—In applying paragraph (2) (A) and (B), personal holding company income and adjusted ordinary gross income shall not include dividends received by a common parent corporation from another corporation if—

(A) the common parent corporation owns, directly or indirectly, more than 50 percent of the outstanding voting stock of such other corporation, and

(B) such other corporation is not a personal holding company for the taxable year in which the dividends are paid.

(5) CERTAIN DIVIDEND INCOME RECEIVED FROM A NONINCLUDIBLE LIFE INSURANCE COMPANY.—In the case of an affiliated group of corporations filing or required to file a consolidated return under section 1501 for any taxable year, there shall be excluded from consolidated personal holding company income and consolidated adjusted ordinary gross income for purposes of this part dividends received by a member of the affiliated group from a life insurance company taxable under section [802] *801* that is not a member of the affiliated group solely by reason of the application of paragraph (2) of subsection (b) of section 1504.

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SEC. 543. PERSONAL HOLDING COMPANY INCOME.

(a) GENERAL RULE.—For purposes of this subtitle, the term "personal holding company income" means the portion of the adjusted ordinary gross income which consists of:

(1) DIVIDENDS, ETC.—Dividends, interest, royalties (other than mineral, oil, or gas royalties or copyright royalties), and annuities. This paragraph shall not apply to—

(A) interest consitituting rent (as defined in subsection (b)(3)), *and*

(B) interest on amounts set aside in a reserve fund under section 511 or 607 of the Merchant Marine Act, 1936 (46 U.S.C. 1161 or 1177) [, and].

[(C) dividends to which section 302(b)(4) would apply if the corporation were an individual.]

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PART III—FOREIGN PERSONAL HOLDING COMPANIES

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SEC. 551. FOREIGN PERSONAL HOLDING COMPANY INCOME TAXED TO UNITED STATES SHAREHOLDERS.

(a) GENERAL RULE.—* * *

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(f) STOCK HELD THROUGH FOREIGN ENTITY.—For purposes of this section, stock of a foreign personal holding company owned (directly or through the application of this subsection) by—

(1) a partnership, estate, or trust which is not a United States shareholder, or

(2) a foreign corporation which is not a foreign personal holding company,

shall be considered as being owned proportionately by its partners, beneficiaries, or shareholders. In any case to which the preceding sentence applies, the Secretary may by regulations provide for such adjustments in the application of this part as may be necessary to carry out the purposes of the preceding sentence.

[(f)] *(g)* CROSS REFERENCES.—

(1) For basis of stock or securities in a foreign personal holding company acquired from a decedent, see section 1014 (b)(5).

(2) For period of limitation on assessment and collection without assessment, in case of failure to include in gross income the amount properly includible therein under subsection (b), see section 6501.

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SEC. 554. STOCK OWNERSHIP.

(a) CONSTRUCTIVE OWNERSHIP.—For purposes of determining whether a corporation is a foreign personal holding company, insofar as such determination is based on stock ownership under section 552(a)(2), section 553(a)(5), or section 553(a)(6)—

(1) STOCK NOT OWNED BY INDIVIDUAL.—Stock owned, directly or indirectly, by or for a corporation, partnership, estate, or trust shall be considered as being owned proportionately by its shareholders, partners, or beneficiaries.

(2) FAMILY AND PARTNERSHIP OWNERSHIP.—An individual shall be considered as owning the stock owned, directly or indirectly, by or for his family or by or for his partner. For purposes of this paragraph, the family of an individual includes only his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.

(3) OPTIONS.—If any person has an option to acquire stock, such stock shall be considered as owned by such person. For purposes of this paragraph, an option to acquire such an

option, and each one of a series of such options, shall be considered as an option to acquire such stock.

(4) APPLICATION OF FAMILY-PARTNERSHIP AND OPTION RULES.—Paragraphs (2) and (3) shall be applied—

(A) for purposes of the stock ownership requirement provided in section 552(a)(2), if, but only if, the effect is to make the corporation a foreign personal holding company;

(B) for purposes of section 553(a)(5) (relating to personal service contracts) or of section 553(a)(6) (relating to the use of property by shareholders), if, but only if, the effect is to make the amounts therein referred to includible under such paragraph as foreign personal holding company income.

(5) CONSTRUCTIVE OWNERSHIP AS ACTUAL OWNERSHIP.—Stock constructively owned by a person by reason of the application of paragraph (1) or (3) shall, for purposes of applying paragraph (1) or (2) be treated as actually owned by such person; but stock constructively owned by an individual by reason of the application of paragraph (2) shall not be treated as owned by him for purposes of again applying such paragraph in order to make another the constructive owner of such stock.

(6) OPTION RULE IN LIEU OF FAMILY AND PARTNERSHIP RULE.—If stock may be considered as owned by an individual under either paragraph (2) or (3) it shall be considered as owned by him under paragraph (3).

For purposes of the stock ownership requirement provided in section 552(a)(2), stock owned by a nonresident alien individual (other than a foreign trust or foreign estate) shall not be considered by reason of so much of paragraph (2) as relates to attribution through family membership as owned by a citizen or by a resident alien individual who is not the spouse of the nonresident individual.

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Subchapter H—Banking Institutions

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PART II—MUTUAL SAVINGS BANKS, ETC.

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SEC. 594. ALTERNATIVE TAX FOR MUTUAL SAVINGS BANKS CONDUCTING LIFE INSURANCE BUSINESS.

(a) ALTERNATIVE TAX.—* * *

(b) LIMITATIONS OF SECTION.—Subsection (a) shall apply only if the life insurance department would, if it were treated as a separate corporation, qualify as a life insurance company under section [801] *816*.

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Subchapter J—Estates, Trusts, Beneficiaries, and Decedents

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PART I—ESTATES, TRUSTS, AND BENEFICIARIES

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Subpart A—General Rules for Taxation of Estates and Trusts

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SEC. 642. SPECIAL RULES FOR CREDITS AND DEDUCTIONS.

(a) CREDITS AGAINST TAX.—

(1) FOREIGN TAXES.—An estate or trust shall be allowed the credit against tax for taxes imposed by foreign countries and possessions of the United States, to the extent allowed by section 901, only in respect of so much of the taxes described in such section as is not properly allocable under such section to the beneficiaries.

(2) POLITICAL CONTRIBUTIONS.—An estate or trust shall not be allowed the credit against tax for political contributions provided by section [41] *24*.

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Subpart C—Estates and Trusts Which May Accumulate Income or Which Distribute Corpus

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SEC. 664. CHARITABLE REMAINDER TRUSTS.

(a) GENERAL RULE.—* * *

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(f) CERTAIN CONTINGENCIES PERMITTED.—

(1) GENERAL RULE.—If a trust would, but for a qualified contingency, meet the requirements of paragraph (1)(A) or (2)(A) of subsection (d), such trust shall be treated as meeting such requirements.

(2) VALUE DETERMINED WITHOUT REGARD TO QUALIFIED CONTINGENCY.—For purposes of determining the amount of any charitable contribution (or the actuarial value of any interest), a qualified contingency shall not be taken into account.

(3) QUALIFIED CONTINGENCY.—For purposes of this subsection, the term qualified contingency means any provision of a trust which provides that, upon the happening of a contingency, the payments described in paragraph (1)(A) or (2)(A) of subsection (d) (as the case may be) will terminate not later than such payments would otherwise terminate under the trust.

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Subpart F—Miscellaneous

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SEC. 682. INCOME OF AN ESTATE OR TRUST IN CASE OF DIVORCE, ETC.

(a) INCLUSION IN GROSS INCOME OF WIFE.—There shall be included in the gross income of a wife who is divorced or legally separated under a decree of divorce or of separate maintenance (or who is separated from her husband under a written separation agreement) the amount of the income of any trust which such wife is entitled to receive and which, except for this section, would be includible in the gross income of her husband, and such amount shall not, despite any other provision of this subtitle, be includible in the gross income of such husband. This subsection shall not apply to that part of any such income of the trust which the terms of the decree, written separation agreement, or trust instrument fix, in terms of an amount of money or a portion of such income, as a sum which is payable for the support of minor children of such husband. In case such income is less than the amount specified in the decree, agreement, or instrument, for the purpose of applying the preceding sentence, such income, to the extent of such sum payable for such support, shall be considered a payment for such support.

(b) WIFE CONSIDERED A BENEFICIARY.—For purposes of computing the taxable income of the estate or trust and the taxable income of a wife to whom subsection (a) [or section 71] applies, such wife shall be considered as the beneficiary specified in this part. [A periodic payment under section 71 to any portion of which this part applies shall be included in the gross income of the beneficiary in the taxable year in which under this part such portion is required to be included.]

(c) CROSS REFERENCE.—For definitions of "husband" and "wife", as used in this section, see section 7701(a)(17).

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PART II—INCOME IN RESPECT OF DECEDENTS

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SEC. 691. RECIPIENTS OF INCOME IN RESPECT OF DECEDENTS.

(a) INCLUSION IN GROSS INCOME.—

(1) GENERAL RULE.—The amount of all items of gross income in respect of a decedent which are not properly includible in respect of the taxable period in which falls the date of his death or a prior period (including the amount of all items of gross income in respect of a prior decedent, if the right to receive such amount was acquired by reason of the death of the prior decedent or by bequest, devise, or inheritance from the prior decedent) shall be included in the gross income, for the taxable year when received, of:

(A) the estate of the decedent, if the right to receive the amount is acquired by the decedent's estate from the decedent;

(B) the person who, by reason of the death of the decedent, acquires the right to receive the amount, if the right to receive the amount is not acquired by the decedent's estate from the decedent; or

(C) the person who acquires from the decedent the right to receive the amount by bequest, devise, or inheritance, if the amount is received after a distribution by the decedent's estate of such right.

(2) INCOME IN CASE OF SALE, ETC.—If a right, described in paragraph (1), to receive an amount is transferred by the estate of the decedent or a person who received such right by reason of the death of the decedent or by bequest, devise, or inheritance from the decedent, there shall be included in the gross income of the estate or such person, as the case may be, for the taxable period in which the transfer occurs, the fair market value of such right at the time of such transfer plus the amount by which any consideration for the transfer exceeds such fair market value. For purposes of this paragraph, the term "transfer" includes sale, exchange, or other disposition, or the satisfaction of an installment obligation at other than face value, but does not include transmission at death to the estate of the decedent or a transfer to a person pursuant to the right of such person to receive such amount by reason of the death of the decedent or by bequest, devise, or inheritance from the decedent.

(3) CHARACTER OF INCOME DETERMINED BY REFERENCE TO DECEDENT.—The right, described in paragraph (1), to receive an amount shall be treated, in the hands of the estate of the decedent or any person who acquired such right by reason of the death of the decedent, or by bequest, devise, or inheritance from the decedent, as if it had been acquired by the estate or such person in the transaction in which the right to receive the income was originally derived and the amount includible in gross income under paragraph (1) or (2) shall be considered in the hands of the estate or such person to have the character which it would have had in the hands of the decedent if the decedent had lived and received such an amount.

(4) INSTALLMENT OBLIGATIONS ACQUIRED FROM DECEDENT.—In the case of an installment obligation reportable by the decedent on the installment method under section 453 or 453A, if such obligation is acquired by the decedent's estate from the decedent or by any person by reason of the death of the decedent or by bequest, devise, or inheritance from the decedent—

(A) an amount equal to the excess of the face amount of such obligation over the basis of the obligation in the hands of the decedent (determined under section 453B) shall, for the purpose of paragraph (1), be considered as an item of gross income in respect of the decedent; and

(B) such obligation shall, for purposes of paragraphs (2) and (3), be considered a right to receive an item of gross income in respect of the decedent, but the amount includible in gross income under paragraph (2) shall be reduced by an amount equal to the basis of the obligation in the hands of the decedent (determined under section 453B).

(5) OTHER RULES RELATING TO INSTALLMENT OBLIGATIONS.—

(A) IN GENERAL.—In the case of an installment obligation reportable by the decedent on the installment method under section 453 or 453A, for purposes of paragraph (2)—

(i) the second sentence of paragraph (2) shall be applied by inserting "(other than the obligor)" after "or a transfer to a person,"

(ii) any cancellation of such an obligation shall be treated as a transfer, and

(iii) any cancellation of such an obligation occurring at the death of the decedent shall be treated as a transfer by the estate of the decedent (or, if held by a person other than the decedent before the death of the decedent, by such person).

(B) Face amount treated as fair market value in certain cases.—In any case to which the first sentence of paragraph (2) applies by reason of subparagraph (A), if the decedent and the obligor were related persons (within the meaning of section 453(f)(1)), the fair market value of the installment obligation shall be treated as not less than its face amount.

(C) Cancellation includes becoming unenforceable.—For purposes of subparagraph (A), an installment obligation which becomes unenforceable shall be treated as if it were canceled.

(b) Allowance of Deductions and Credit.—The amount of any deduction specified in section 162, 163, 164, 212, or 611 (relating to deductions for expenses, interest, taxes, and depletion) or credit specified in section **[**33**]** *27* (relating to foreign tax credit), in respect of a decedent which is not properly allowable to the decedent in respect of the taxable period in which falls the date of his death, or a prior period, shall be allowed:

(1) Expenses, interest, and taxes.—In the case of a deduction specified in section 162, 163, 164, or 212 and a credit specified in section **[**33,**]** *27,* in the taxable year when paid—

(A) to the estate of the decedent; except that

(B) if the estate of the decedent is not liable to discharge the obligation to which the deduction or credit relates, to the person who, by reason of the death of the decedent or by bequest, devise, or inheritance acquires, subject to such obligation, from the decedent an interest in property of the decedent.

(2) Depletion.—In the case of the deduction specified in section 611, to the person described in subsection (a) (1) (A), (B), or (C) who, in the manner described therein, receives the income to which the deduction relates, in the taxable year when such income is received.

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Subchapter K—Partners Partnerships

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PART II—CONTRIBUTIONS, DISTRIBUTIONS, AND TRANSFERS

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Subpart D—Provisions Common to Other Subparts

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SEC. 751. UNREALIZED RECEIVABLES AND INVENTORY ITEMS.

(a) SALE OR EXCHANGE OF INTEREST IN PARTNERSHIP.—The amount of any money, or the fair market value of any property, received by a transferor partner in exchange for all or a part of his interest in the partnership attributable to—

(1) unrealized receivables of the partnership, or

(2) inventory items of the partnership which have appreciated substantially in value,

shall be considered as an amount realized from the sale or exchange of property other than a capital asset.

(b) CERTAIN DISTRIBUTIONS TREATED AS SALES OR EXCHANGES.—

(1) GENERAL RULE.—To the extent a partner receives in a distribution—

(A) partnership property described in subsection (a)(1) or (2) in exchange for all or a part of his interest in other partnership property (including money), or

(B) partnership property (including money) other than property described in subsection (a)(1) or (2) in exchange for all or a part of his interest in partnership property described in subsection (a)(1) or (2),

such transactions shall, under regulations prescribed by the Secretary, be considered as a sale or exchange of such property between the distributee and the partnership (as constituted after the distribution).

(2) EXCEPTIONS.—Paragraph (1) shall not apply to—

(A) a distribution of property which the distributee contributed to the partnership, or

(B) payments, described in section 736(a), to a retiring partner or successor in interest of a deceased partner.

(c) UNREALIZED RECEIVABLES.—For purposes of this subchapter, the term "unrealized receivable" includes, to the extent not previously includible in income under the method of accounting used by the partnership, any rights (contractual or otherwise) to payment for—

(1) goods delivered, or to be delivered, to the extent the proceeds therefrom would be treated as amounts received from the sale or exchange of property other than a capital asset, or

(2) services rendered, or to be rendered.

For purposes of this section and sections 731, 736, and 741, such term also includes mining property (as defined in section 617(f)(2)), stock in a DISC (as described in section 992(a)), section 1245 property (as defined in section 1245(a)(3), section 1245 recovery property (as defined in section 1245(a)(5)), stock in certain foreign corporations (as described in section 1248), section 1250 property (as defined in section 1250(c)), [farm recapture property (as defined in section 1251(e)(1)),] farm land (as defined in section 1252(a)), franchises, trademarks, or trade names (referred to in section 1253(a)), and an oil, gas, or geothermal property (described in section 1254) but only to the extent of the amount which would be treated as gain to which section 617(d)(1), 995(c), 1245(a), 1248(a), 1250(a), [1251(c),] 1252(a), 1253(a) or 1254(a) would apply if (at the time of the transaction described in this section or section 731, 736, or 741, as the case may be) such property had been sold by the partnership at its fair market value.

(d) INVENTORY ITEMS WHICH HAVE APPRECIATED SUBSTANTIALLY IN VALUE.—

(1) SUBSTANTIAL APPRECIATION.—Inventory items of the partnership shall be considered to have appreciated substantially in value if their fair market value exceeds—

(A) 120 percent of the adjusted basis to the partnership of such property, and

(B) 10 percent of the fair market value of all partnership property, other than money.

(2) INVENTORY ITEMS.—For purposes of this subchapter the term "inventory items" means—

(A) property of the partnership of the kind described in section 1221(1),

(B) any other property of the partnership which, on sale or exchange by the partnership, would be considered property other than a capital asset and other than property described in section 1231,

(C) any other property of the partnership which, if sold or exchanged by the partnership, would result in a gain taxable under subsection (a) of section 1246 (relating to gain on foreign investment company stock), and

(D) any other property held by the partnership which, if held by the selling or distributee partner, would be considered property of the type described in subparagraph (A), (B), or (C).

(e) LIMITATION ON TAX ATTRIBUTABLE TO DEEMED SALES OF SECTION 1248 STOCK.—For purposes of applying this section and section 731, 736, and 741 to any amount resulting from the reference to section 1248(a) in the second sentence of subsection (c), in the case of an individual, the tax attributable to such amount shall be limited in the manner provided by subsection (b) of section 1248 (relating to gain from certain sales or exchanges of stock in certain foreign corporation).

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Subchapter L—Insurance Companies

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[PART I—LIFE INSURANCE COMPANIES

[Subpart A. Definition; tax imposed.
[Subpart B. Investment income.
[Subpart C. Gain and loss from operations.
[Subpart D. Distributions to shareholders.
[Subpart E. Miscellaneous provisions.

[Subpart A—Definition; Tax Imposed

[Sec. 801. Definition of life insurance company.
[Sec. 802. Tax imposed.

[SEC. 801. DEFINITION OF LIFE INSURANCE COMPANY.

[(a) Life Insurance company Defined.—For purposes of this subtitle, the term "life insurance company" means an insurance company which is engaged in the business of issuing life insurance and annuity contracts (either separately or combined with health and accident insurance), or noncancellable contracts of health and accident insurance, if—

[(1) its life insurance reserves (as defined in subsection (b)), plus

[(2) unearned premiums, and unpaid losses (whether or not ascertained), on noncancelleble life, health, or accident policies not included in life insurance reserves.

comprise more than 50 percent of its total reserves (as defined in subsection (c)).

[(b) Life Insurance Reserves Defined.—

[(1) In general.—For purposes of this part, the term "life insurance reserves" means amounts—

[(A) which are computed or estimated on the basis of recognized mortality or morbidity tables and assumed rates of interest, and

[(B) which are set aside to mature or liquidate, either by payment or reinsurance, future unaccrued claims arising from life insurance, annuity, and noncancellable health and accident insurance contracts (including life insurance or annuity contracts combined with noncancellable health and accident insurance) involving, at the time with respect to which the reserve is computed, life, health, or accident contingencies.

[(2) Reserves must be required by law.—Except—

[(A) in the case of policies covering life, health, and accident insurance combined in one policy issued on the weekly premium payment plan, continuing for life and not subject to cancellation, and

[(B) as provided in paragraph (3),

in addition to the requirements set forth in paragraph (1), life insurance reserves must be required by law.

[(3) Assessment companies.—In the case of an assessment life insurance company or association, the term "life insurance reserves" includes—

[(A) sums actually deposited by such company or association with State officers pursuant to law as guaranty or reserve funds, and

[(B) any funds maintained, under the charter or articles of incorporatin or association (or bylaws approved by a State insurance commissioner) of such company or association, exclusively for the payment of claims arising under certificates of membership or policies issued on the assessment plan and not subject to any other use.

For purposes of this part, the rate of interest assumed in calculating the reserves described in subparagraphs (A) and (B) shall be 3 percent.

[(4) Deficiency reserves excluded.—The term "life insurance reserves" does not include deficiency reserves. For purposes of this subsection and subsection (c), the deficiency reserve for any contract is that portion of the reserve for such contract equal to the amount (if any) by which—

[(A) the present value of the future net premiums required for such contract, exceeds

[(B) the present value of the future actual premiums and consideration charged for such contract.

[(5) Amount of reserves.—For purposes of this subsection, subsection (a), and subsection (c), the amount of any reserve (or portion thereof) for any taxable year shall be the mean of such reserve (or portion thereof) at the beginning and end of the taxable year.

[(c) Total Reserves Defined.—For purposes of subsection (a), the term "total reserves" means—

[(1) life insurance reserves,

[(2) unearned premiums, and unpaid losses (whether or not ascertained), not included in life insurance reserves, and

[(3) all other insurance reserves required by law.

The term "total reserves" does not include deficiency reserves (within the meaning of subsection (b)(4)).

[(d) Adjustments in Reserves for Policy Loans.—For purposes only of determining under subsection (a) whether or not an insurance company is a life insurance company, the life insurance reserves, and the total reserves, shall each be reduced by an amount equal to the mean of the aggregates, at the beginning and end of the taxable year, of the policy loans outstanding with respect to contracts for which life insurance reserves are maintained.

[(e) Guaranteed Renewable Contracts.—For purposes of this part, guaranteed renewable life, health, and accident insurance shall be treated in the same manner as noncancellable life, health, and accident insurance.

[(f) Burial and Funeral Benefit Insurance Companies.—A burial or funeral benefit insurance company engaged directly in the manufacture of funeral supplies or the performance of funeral services shall not be taxable under this part but shall be taxable under section 821 or section 831.

[(g) Contracts With Reserves Based on Segregated Asset Accounts.—

[(1) Definitions.—

[(A) Annuity contracts include variable annuity contracts.—For purposes of this part, an "annuity contract" includes a contract which provides for the payment of a variable annuity computed on the basis of recognized mortality tables and the investment experience of the company issuing the contract.

[(B) Contracts with reserves based on a segregated asset account.—For purposes of this part, a "contract with reserves based on a segregated asset account" is a contract—

[(i) which provides for the allocation of all or part of the amounts received under the contract to an account which, pursuant to State law or regulation, is segregated from the general asset accounts of the company, [(ii) which is described in any paragraph of section 805(d) (other than a life, health or accident, property, casualty, or liability insurance contract) or which provides for the payment of annuities, and

[(iii) under which the amounts paid in, or the amount paid out, reflect the investment return and the market value of the segregated asset account.

If a contract ceases to reflect current investment return and current market value, such contract shall not be considered as meeting the requirements of clause (iii) after such cessation.

[(2) Life insurance reserves.—For purposes of subsection (b)(1)(A) of this section, the reflection of the investment return and the market value of the segregated asset account shall be considered an assumed rate of interest.

[(3) Separate accounting.—For purposes of this part, a life insurance company which issues contracts with reserves based on segregated asset accounts shall separately account for the various income, exclusion, deduction, asset, reserve, and other liability items properly attributable to such segregated asset accounts. For such items as are not accounted for directly, separate accounting shall be made—

[(A) in accordance with the method regularly employed by such company, if such method is reasonable, and

[(B) in all other cases, in accordance with regulations prescribed by the Secretary.

[(4) Investment yield.—

[(A) In general.—For purposes of this part, the policy and other contract liability requirements, and the life insurance company's share of investment yield, shall be separately computed.—

[(i) with respect to the items separately accounted for in accordance with paragraph (3), and

[(ii) excluding the items taken into account under clause (i).

[(B) Capital gains and losses.—If, without regard to subparagraph (A), the net short-term capital gain exceeds the net long-term capital loss, such excess shall be allocated between clauses (i) and (ii) of subparagraph (A) in proportion to the respective contributions to such excess of the items taken into account under each such clause.

[(5) Policy and other contract liability requirements.—For purposes of this part—

[(A) with respect to life insurance reserves based on segregated asset accounts, the adjusted reserves rate and the current earnings rate for purposes of sections 805(b), and the rate of interest assumed by the taxpayer for purposes of sections 805(c) and 809(a)(2), shall be a rate equal to the current earnings rate determined under section 805(b)(2) with respect to the items separately accounted for in accordance with paragraph (3) reduced by the percentage obtained by dividing—

[(i) any amount retained with respect to such reserves by the life insurance company from gross investment income (as defined in section 804(b)) on segregated assets, to the extent such retained amount exceeds the deductions allowable under section 804(c) which are attributable to such reserves, by

[(ii) the means of such reserves; and

[(B) with respect to reserves based on segregated asset accounts other than life insurance reserves, an amount equal to the product of—

[(i) the rate of interest assumed as defined in subparagraph (A), and

[(ii) the means of such reserves,

shall be included as interest paid within the meaning of section 805(e)(1).

[(6) INCREASES AND DECREASES IN RESERVES.—For purposes of subsections (a) and (b) of section 810, the sum of the items described in section 810(c) taken into account as of the close of the taxable year shall, under regulations prescribed by the Secretary, be adjusted—

[(A) by subtracting therefrom an amount equal to the sum of the amounts added from time to time (for the taxable year) to the reserves separately accounted for in accordance with paragraph (3) by reason of appreciation in value of assets (whether or not the assets have been disposed of), and

[(B) by adding thereto an amount equal to the sum of the amounts subtracted from time to time (for the taxable year) from such reserves by reason of depreciation in value of assets (whether or not the assets have been disposed of).

The deduction allowable for items described in paragraphs (1) and (7) of section 809(d) with respect to segregated asset accounts shall be reduced to the extent that the amount of such items is increased for the taxable year by appreciation (or increased to the extent that the amount of such items is decreased for the taxable year by depreciation) not reflected in adjustments under the preceding sentence.

[(7) BASIS OF ASSETS HELD FOR QUALIFIED PENSION PLAN CONTRACTS.—In the case of contracts described in any paragraph of section 805(d), the basis of each asset in a segregated asset account shall (in addition to all other adjustments to basis) be—

[(A) increased by the amount of any appreciation in value, and

[(B) decreased by the amount of any depreciation in value,

to the extent that such appreciation and depreciation are from time to time reflected in the increases and decreases in reserves or other items in paragraph (6) with respect to such contracts.

[(8) ADDITIONAL SEPARATE COMPUTATIONS.—Under regulations prescribed by the Secretary, such additional separate computations shall be made, with respect to the items separately accounted for in accordance with paragraph (3), as may be necessary to carry out the purposes of this subsection and this part.

[SEC. 802. TAX IMPOSED.

[(a) TAX IMPOSED.—

[(1) IN GENERAL.—A tax is hereby imposed for each taxable year on the life insurance company taxable income of every life insurance company. Such tax shall consist of a tax computed as provided in section 11 as though the life insurance company taxable income were the taxable income referred to in section 11.

[(2) ALTERNATIVE TAX IN CASE OF CAPITAL GAINS.—If for any taxable year any life insurance company has a net capital gain, then, in lieu of the tax imposed by paragraph (1), there is hereby imposed a tax (if such tax is less than the tax imposed by such paragraph) which shall consist of the sum of—

[(A) a partial tax, computed as provided by paragraph (1), on the life insurance company taxable income determined by reducing the taxable investment income, and the gain from operations, by the amount of such net capital gain, and

[(B) an amount determined as provided in section 1201(a) on such net capital gain.

[(b) LIFE INSURANCE COMPANY TAXABLE INCOME DEFINED.—For purposes of this part, the term "life insurance company taxable income" means the sum of—

[(1) the taxable investment income (as defined in section 804) or, if smaller, the gain from operations (as defined in section 809),

[(2) if the gain from operations exceeds the taxable investment income, an amount equal to 50 percent of such excess, plus

[(3) the amount subtracted from the policyholders' surplus account for the taxable year, as determined under section 815.

Subpart B—Investment Income

[Sec. 804. Taxable investment income.
[Sec. 805. Policy and other contract liability requirements.
[Sec. 806. Certain changes in reserves and assets.

[SEC. 804. TAXABLE INVESTMENT INCOME.

[(a) IN GENERAL.—

[(1) EXCLUSION OF POLICYHOLDERS' SHARE OF INVESTMENT YIELD.—The policyholders' share of each and every item of investment yield (including taxexempt interest and dividends received) of any life insurance company shall not be included in taxable investment income. For purposes of the preceding sentence, the policyholders' share of any item shall be that percentage obtained by dividing the policy and other contract liability requirements by the investment yield; except that if the policy and other contract liability requirements exceed the investment yield, then the policyholders' share of any item shall be 100 percent.

[(2) TAXABLE INVESTMENT INCOME DEFINED.—For purposes of this part, the taxable investment income for any taxable year shall be an amount (not less than zero) equal to the amount (if any) of the net capital gain plus the sum of the life insurance company's share of each and every item of investment yield (including tax-exempt interest and dividends received), reduced by—

[(A) the sum of—

[(i) the life insurance company's share of interest which under section 103 is excluded from gross income, and

[(ii) the deductions for dividends received provided by sections 243, 244, and 245 (as modified by paragraph (4)) computed with respect to the life insurance company's share of the dividends received; and

[(B) the small business deduction provided by paragraph (3).

For purposes of the preceding sentence, the life insurance company's share of any item shall be that percentage which, when added to the percentage obtained under the second sentence of paragraph (1), equals 100 percent.

[(3) Small business deduction.—For purposes of this part, the small business deduction is an amount equal to 10 percent of the investment yield for the taxable year. The deduction under this paragraph shall not exceed $25,000.

[(4) Application of section 246(b).—In applying section 246(b) (relating to limitation on aggregate amount of deductions for dividends received) for purposes of this subsection, the limit on the aggregate amount of the deductions allowed by sections 243(a)(1), 244(a), and 245 shall be 85 percent of the taxable investment income computed without regard to the deductions allowed by such sections.

[(b) Gross Investment Income.—For purposes of this part, the term "gross investment income" means the sum of the following:

[(1) Interest, etc.—The gross amount of income from—

[(A) interest, dividends, rents, and royalties,

[(B) the entering into of any lease, mortgage, or other instrument or agreement from which the life insurance company derives interest, rents, or royalties, and

[(C) the alteration or termination of any instrument or agreement described in subparagraph (B).

[(2) Short-term capital gain.—The amount (if any) by which the net short-term capital gain exceeds the net long-term capital loss.

[(3) Trade or business income.—The gross income from any trade or business (other than an insurance business) carried on by the life insurance company, or by a partnership of which the life insurance company is a partner. In computing gross income under this paragraph, there shall be excluded any item described in paragraph (1).

Except as provided in paragraph (2), in computing gross investment income under this subsection, there shall be excluded any gain from the sale or exchange of a capital asset, and any gain considered as gain from the sale or exchange of a capital asset.

[(c) Investment Yield Defined.—For purposes of this part, the term "investment yield" means the gross investment income less the following deductions—

[(1) Investment expenses.—Investment expenses for the taxable year. If any general expenses are in part assigned to or included in the investment expenses, the total deduction under this paragraph shall not exceed the sum of—

[(A) one-fourth of one percent at the mean of the assets (as defined in section 805(b)(4)) held at the beginning and end of the taxable year,

[(B) the amount of the mortgage service fees for the taxable year, plus

[(C) whichever of the following is the greater:

[(i) one-fourth of the amount by which the investment yield (computed without any deduction for investment expenses allowed by this paragraph) exceeds 3¾ percent of the mean of the assets (as defined in section 805(b)(4)) held at the beginning and end of the taxable year, reduced by the amount described in subparagraph (B), or

[(ii) one-fourth of one percent of the mean of the value of mortgages held at the beginning and end of the taxable year for which there are no mortgage service fees for the taxable year.

[(2) REAL ESTATE EXPENSES.—The amount of taxes (as provided in section 164), and other expenses, for the taxable year exclusively on or with respect to the real estate owned by the company. No deduction shall be allowed under this paragraph for any amount paid out for new buildings, or for permanent improvements or betterments made to increase the value of any property.

[(3) DEPRECIATION.—The deduction allowed by section 167. The deduction under this paragraph and paragraph (2) on account of any real estate owned and occupied for insurance purposes in whole or in part by a life insurance company shall be limited to an amount which bears the same ratio to such deduction (computed without regard to this sentence) as the rental value of the space not so occupied bears to the rental value of the entire property.

[(4) DEPLETION.—The deduction allowed by section 611 (relating to depletion).

[(5) TRADE OR BUSINESS DEDUCTIONS.—The deductions allowed by this subtitle (without regard to this part) which are attributable to any trade or business (other than an insurance business) carried on by the life insurance company, or by a partnership of which the life insurance company is a partner; except that in computing the deduction under this paragraph—

[(A) there shall be excluded losses—

[(i) from (or considered as from) sales or exchanges of capital assets,

[(ii) from sales or exchanges of property used in the trade or business (as defined in section 1231(b)), and

[(iii) from the compulsory or involuntary conversion (as a result of destruction, in whole or in part, theft or seizure, or an exercise of the power of requisition or condemnation or the threat or imminence thereof) of property used in the trade or business (as so defined).

[(B) Any item, to the extent attributable to the carrying on of the insurance business, shall not be taken into account.

[(C) The deduction for net operating losses provided in section 172, and the special deductions for corporation provided in part VIII of subchapter B, shall not be allowed.

[(d) Cross reference.—For reduction of the $25,000 amount provided in subsection (a)(4) in the case of certain controlled corporations, see sections 1561 and 1564.

[SEC. 805. POLICY AND OTHER CONTRACT LIABILITY REQUIREMENTS.

[(a) In General.—For purposes of this part, the term "policy and other contract liability requirements" means, for any taxable year, the sum of—

[(1) the adjusted life insurance reserves, multiplied by the adjusted reserves rate,

[(2) the mean of the pension plan reserves at the beginning and end of the taxable year, multiplied by the current earnings rate, and

[(3) the interest paid.

[(b) Adjusted Reserves Rate and Earnings Rates.—

[(1) Adjusted reserves rate.—For purposes of this part, the adjusted reserves rate for any taxable year is the average earnings rate or, if lower, the current earnings rate.

[(2) Current earnings rate.—For purposes of this part, the current earnings rate for any taxable year is the amount determined by dividing—

[(A) the taxpayer's investment yield for such taxable year, by

[(B) the mean of the taxpayer's assets at the beginning and end of the taxable year.

[(3) Average earnings rate.—

[(A) In general.—For purposes of this part, the average earnings rate for any taxable year is the average of the current earnings rates for such taxable year and for each of the 4 taxable years immediately preceding such taxable year (excluding any of such 4 taxable years for which the taxpayer was not an insurance company).

[(B) Special rule.—For purposes of subparagraph (A), the current earnings rate for any taxable year of any company which, for such year, is an insurance company (but not a life insurance company) shall be determined as if this part applied to such company for such year.

[(4) Assets.—For purposes of this part, the term "assets" means all assets of the company (including nonadmitted assets), other than real and personal property (excluding money) used by it in carrying on an insurance trade or business. For purposes of this paragraph, the amount attributable to—

[(A) real property and stock shall be the fair market value thereof, and

[(B) any other asset shall be the adjusted basis of such asset for purposes of determining gain on sale or other disposition.

[(c) ADJUSTED LIFE INSURANCE RESERVES.—

[(1) ADJUSTED LIFE INSURANCE RESERVES DEFINED.—For purposes of this part, the term "adjusted life insurance reserves" means—

[(A) the mean of the life reserves (as defined in section 801(b)), other than pension plan reserves or reserves on any qualified contract, at the beginning and end of the taxable year, multiplied by

[(B) that percentage which equals 100 percent—

[(i) increased by that percentage which is 10 times the average rate of interest assumed by the taxpayer in calculating such reserves, and

[(ii) reduced by that percentage which is 10 times the adjusted reserves rate.

[(C) 0.9 raised to the power of n where n is the number (positive or negative) determined by subtracting—

[(i) 100 times the average rate of interest assumed by the taxpayer in calculating such reserves, from

[(ii) 100 times the adjusted reserves rate.

[(2) AVERAGE INTEREST RATE ASSUMED.—For purposes of this part, the average rate of interest assumed in calculating reserves shall be computed—

[(A) by multiplying each assumed rate of interest by the means of the amounts of such reserves computed at that rate at the beginning and end of the taxable year, and

[(B) by dividing (i) the sum of the products ascertained under subparagraph (A), by (ii) the mean of the total of such reserves at the beginning and end of the taxable year.

[(d) PENSION PLAN RESERVES.—For purposes of this part, the term "pension plan reserves" means that portion of the life insurance reserves which is allocable to contracts—

[(1) purchased under contracts entered into with trusts which (as of the time the contracts were entered into) were deemed to be (A) trusts described in section 401(a) and exempt from tax under section 501(a), or (B) trusts exempt from tax under section 165 of the Internal Revenue Code of 1939 or the corresponding provisions of prior revenue laws;

[(2) purchased under contracts entered into under plans which (as of the time the contracts were entered into) were deemed to be plans described in section 403(a), or plans meeting the requirements of paragraphs (3), (4), (5), and (6) of section 165(a) of the Internal Revenue Code of 1939;

[(3) provided for employees of the life insurance company under a plan which, for the taxable year, meets the requirements of paragraphs (3), (4), (5), (6), (7), (8), (11), (12), (13), (14), (15), (16), (19), (20), and (22) of section 401(a);

[(4) purchased to provide retirement annuities for its employees by an organization which (as of the time the contracts were purchased) was an organization described in section 501(c)(3) which was exempt from tax under section 501(a) or was an organization exempt from tax under section 101(6) of the Internal Revenue Code of 1939 or the corresponding provisions of prior revenue laws, or purchased to provide retirement annuities for employees described in section 403(b)(1)(A)(ii) by an employer which is a State, a political subdivision of a State, or an agency or instrumentality of any one or more of the foregoing;

[(5) purchased under contracts entered into with trusts which (at the time the contracts were entered into) were individual retirement accounts described in section 408(a) or under contracts entered into with individual retirement annuities described in section 408(b); or

[(6) purchased by—

[(A) a governmental plan (within the meaning of section 414(d)), or

[(B) the Government of the United States, the government of any State or political subdivision thereof, or by any agency or instrumentality of the foregoing, for use in satisfying an obligation of such government, political subdivision, or agency or instrumentality to provide a benefit under a plan described in subparagraph (A).

[(e) Interest Paid.—For purposes of this part, the interest paid for any taxable year is the sum of—

[(1) Interest on indebtedness.—All interest for the taxable year on indebtedness, except on indebtedness incurred or continued to purchase or carry obligations the interest on which is wholly exempt from taxation under this chapter.

[(2) Amounts in the nature of interest.—All amounts in the nature of interest, whether or not guaranteed, for the taxable year on insurance or annuity contracts (including contracts supplementary thereto) which do not involve, at the time of accrual, life, health, or accident contingencies.

[(3) Discount on prepaid premiums.—All amounts accrued for the taxable year for discounts in the nature of interest, whether or not guaranteed, on premiums or other consideration paid in advance on insurance or annuity contracts.

[(4) Interest on certain special contingency reserves.—Interest for the taxable year on special contingency reserves under contracts of group term life insurance or group health and accident insurance which are established and maintained for the provision of insurance on retired lives, for premium stabilization, or for a combination thereof.

[(5) Qualified guaranteed interest.—Qualified guaranteed interest (within the meaning of subsection (f)).

For purposes of this subpart, the interest paid for any taxable year shall not include any interest paid or accrued after December 31, 1981, by a ceding company (or its affiliates) to any person in connection with a reinsurance agreement (other than interest on account of delay in making periodic settlements of income and expense items under the terms of the agreement).

[(f) Qualified Guaranteed Interest and Qualified Contracts.—For purposes of this section—

[(1) In general.—The term "qualified guaranteed interest" means any amount in the nature of interest for the taxable year on qualified contracts, but only if such amount is determined pursuant to—

[(A) a stated rate of interest which is guaranteed—

[(i) before the beginning of the period for which the interest accrues, and

[(ii) for a period of not less than 12 months (or for a period ending not earlier than the close of the taxable year in which the contract was issued), or

[(B) a rate or rates of interest which—

[(i) meet the requirements of clause (i) of subparagraph (A), and

[(ii) is determined under a formula or other method the terms of which—

[(I) during the period referred to in subparagraph (A)(ii) may not be changed by the taxpayer, and

[(II) are independent of the experience of the taxpayer.

[(2) QUALIFIED CONTRACT.—The term "qualified contract" means any annuity contract (other than any contract described in subsection (d)) which—

[(A) involves (at the time the qualified interest is credited under the contract) life contingencies,

[(B) provides no right under State law for the policyholder to participate in the divisible surplus of the taxpayer, and

[(C) provides that the taxpayer may from time to time credit amounts in the nature of interest in excess of amounts computed on the basis of any rate or rates guaranteed in the contract at the time it was entered into.

[(3) SPECIAL RULE FOR PARTICIPATING CONTRACTS.—

[(A) IN GENERAL.—In the case of an annuity contract which is not a qualified contract solely because it fails to satisfy the requirements of subparagraph (B) of paragraph (2), such contract shall be treated as a qualified contract and the amount taken into account as qualified guaranteed interest with respect to such contract shall be equal to the sum of—

[(i) the amount of interest which would be assumed in calculating reserves with respect to such contract under section 810(c) if such interest were not taken into account under subsection (e), plus

[(ii) 92.5 percent of the excess of—

[(I) the amount of qualified guaranteed interest (determined without regard to this paragraph and as if such contract were a qualified contract), over

[(II) the amount determined under clause (i).

[(B) INTEREST NOT OTHERWISE TAKEN INTO ACCOUNT.—No deduction shall be allowed under any other provision of this part for the 7.5 percent of the excess described in subparagraph (A)(ii) which is not treated as qualified guaranteed interest.

[(g) SPECIAL LIMITATION FOR GROUP PENSION CONTRACTS.—The amount determined under paragraphs (2) and (3) of subsection (a) for policy and other contract liability requirements for group pension contracts shall not exceed the amount actually credited to the policyholders whether such crediting is through premium rate computations, reserve increases, excess interest, experience rate credits, policyholder dividends or otherwise. The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection.

[SEC. 806. CERTAIN CHANGES IN RESERVES AND ASSETS.

[(a) ADJUSTMENTS TO MEANS FOR CERTAIN TRANSFERS OF LIABILITIES.—For purposes of this part, if, during the taxable year, there is a change in life insurance reserves attributable to the transfer between the taxpayer and another person of liabilities under contracts taken into account in computing such reserves, then, under regulations prescribed by the Secretary, the means of such reserves, and the mean of the assets, shall be appropriately adjusted, on a daily basis, to reflect the amounts involved in such transfer. This subsection shall not apply to reinsurance ceded to the taxpayer or to another person.

[(b) CHANGE OF BASIS IN COMPUTING RESERVES.—If the basis for determining the amount of any item referred to in section 810(c) as of the close of the taxable year differs from the basis for such determination as of the beginning of the taxable year, then for purposes of this subpart the amount of such item—

[(1) as of the close of the taxable year shall be computed on the old basis, and

[(2) as of the beginning of the next taxable year shall be computed on the new basis.

[Subpart C—Gain and Loss from Operations

[Sec. 809. In general.
[Sec. 810. Rules for certain reserves.
[Sec. 811. Dividends to policyholders.
[Sec. 812. Operations loss deduction.

[SEC. 809. IN GENERAL.

[(a) EXCLUSION OF SHARE OF INVESTMENT YIELD SET ASIDE FOR POLICYHOLDERS.—

[(1) AMOUNT.—The share of each and every item of investment yield (including tax-exempt interest and dividends received) of any life insurance company set aside for policyholders shall not be included in gain or loss from operations. For purposes of the preceding sentence, the share of any item set aside for policyholders shall be that percentage obtained by dividing the required interest by the investment yield; except that if the required interest exceeds the investment yield, then the share of any item set aside for policyholders shall be 100 percent.

[(2) REQUIRED INTEREST.—for purposes of this part, the required interest for any taxable year is the sum of the amount of qualified guaranteed interest (within the meaning of section 805(f)(1)) and the products obtained by multiplying—

[(A) each rate of interest required, or assumed by the taxpayer, in calculating the reserves described in section 810(c), by

[(B) the means of the amount of such reserves computed at that rate at the beginning and end of the taxable year.

For purposes of subparagraphs (A) and (B) reserves on qualified contracts (within the meaning of section 805(f)(2)) shall not be taken into account.

[(b) GAIN AND LOSS FROM OPERATIONS.—

[(1) GAIN FROM OPERATIONS DEFINED.—For purposes of this part, the term "gain from operations" means the amount by which the sum of the following exceeds the deductions provided by subsection (d):

[(A) the life insurance company's share of each and every item of investment yield (including tax-exempt interest and dividends received);

[(B) the amount (if any) of the net capital gain; and

[(C) the sum of the items referred to in subsection (c).

[(2) LOSS FROM OPERATIONS DEFINED.—For purposes of this part, the term "loss from operations" means the amount by which the sum of the deductions provided by subsection (d) exceeds the sum of—

[(A) the life insurance company's share of each and every item of investment yield (including tax-exempt interest and dividends received);

[(B) the amount (if any) of the net capital gain; and

[(C) the sum of the items referred to in subsection (c).

(3) LIFE INSURANCE COMPANY'S SHARE.—For purposes of this subpart, the life insurance company's share of any item shall be that percentage which, when added to the percentage obtained under the second sentence of subsection (a)(1), equals 100 percent.

[(c) GROSS AMOUNT.—For purposes of subsections (b)(1) and (2), the following items shall be taken into account:

(1) PREMIUMS.—The gross amount of premiums and other consideration, including—

[(A) advance premiums,

[(B) deposits,

[(C) fees,

[(D) assessments,

[(E) consideration in respect of assuming liabilities under contracts not issued by the taxpayer, and

[(F) the amount of dividends to policyholders reimbursed to the taxpayer by a reinsurer in respect of reinsured policies,

on insurance and annuity contracts (including contracts supplementary thereto); less return premiums, and premiums and other consideration arising out of reinsurance ceded. Except in the case of amounts of premiums or other consideration returned to another life insurance company in respect of reinsurance ceded, amounts returned where the amount is not fixed in the contract but depends on the experience of the company or the discretion of the management shall not be included in return premiums.

[(2) DECREASES IN CERTAIN RESERVES.—Each net decrease in reserves which is required by section 810 or 811(b)(2) to be taken into account for purposes of this paragraph.

[(3) OTHER AMOUNTS.—All amounts, not included in computing investment yield and not includible under paragraph (1) or (2), which under this subtitle are includible in gross income.

Except as included in computing investment yield, there shall be excluded any gain from the sale or exchange of a capital asset, and any gain considered as gain from the sale or exchange of a capital asset.

[(d) DEDUCTIONS.—For purposes of subsections (b)(1) and (2), there shall be allowed the following deductions:

[(1) DEATH BENEFITS, ETC.—All claims and benefits accrued, and all losses incurred (whether or not ascertained), during the taxable year on insurance and annuity contracts (including contracts supplementary thereto).

[(2) INCREASES IN CERTAIN RESERVES.—The net increase in reserves which is required by section 810 to be taken into account for purposes of this paragraph.

[(3) DIVIDENDS TO POLICYHOLDERS.—The deduction for dividends to policyholders (determined under section 811(b)), other than the deduction provided under paragraph (12).

[(4) OPERATIONS LOSS DEDUCTION.—The operations loss deduction (determined under section 812).

[(5) CERTAIN NONPARTICIPATING CONTRACTS.—An amount equal to 10 percent of the increase for the taxable year in the reserves for nonparticipating contracts or (if greater) an amount equal to 3 percent of the premiums for the taxable year (excluding that portion of the premiums which is allocable to annuity features) attributable to nonparticipating contracts (other than group contracts) which are issued or renewed for periods of 5 years or more. For purposes of this paragraph, the term "reserves for nonparticipating contracts" means such part of the life insurance reserves (excluding that portion of the reserves which is allocable to annuity features) as relates to nonparticipating contracts (other than group contracts). For purposes of this paragraph and paragraph (6), the term "premiums" means the net amount of the premiums and other consideration taken into account under subsection (c)(1). For purposes of this paragraph, the period for which any contract is issued or renewed includes the period for which such contract is guaranteed renewable.

[(6) CERTAIN ACCIDENT AND HEALTH INSURANCE AND GROUP LIFE INSURANCE.—An amount equal to 2 percent of the premiums for the taxable year attributable to accident and health insurance contracts (other than those to which paragraph (5) applies) and group life insurance contracts. The deduction under this paragraph for the taxable year and all preceding taxable years shall not exceed an amount equal to 50 percent of the premiums for the taxable year attributable to such contracts.

[(7) ASSUMPTION BY ANOTHER PERSON OF LIABILITIES UNDER INSURANCE, ETC., CONTRACTS.—The consideration (other than consideration arising out of reinsurance ceded) in respect of the assumption by another person of liabilities under insurance and annuity contracts (including contracts supplementary thereto).

[(8) TAX-EXEMPT INTEREST, DIVIDENDS, ETC.—

[(A) LIFE INSURANCE COMPANY'S SHARE.—Each of the following items:

[(i) the life insurance company's share of interest which under section 103 is excluded from gross income, and

[(ii) the deductions for dividends received provided by sections 243, 244, and 245 (as modified by subparagraph (B)) computed with respect to the life insurance company's share of the dividends received.

[(B) APPLICATION OF SECTION 246(B).—In applying section 246(b) (relating to limitation on aggregate amount of deductions for dividends received) for purposes of subparagraph (A)(ii), the limit on the aggregate amount of the deductions allowed by sections 243(a)(1), 244(a), and 245 shall be 85 percent of the gain from operations computed without regard to—

[(i) the deductions provide by paragraphs (3), (5), and (6) of this subsection,

[(ii) the operations loss deduction provided by section 812, and

[(iii) the deductions allowed by sections 243(a)(1), 244(a), and 245, but such limit shall not apply for any taxable year for which there is a loss from operations.

[(9) INVESTMENT EXPENSES, ETC.—Investment expenses to the extent not allowed as a deduction under section 804(c)(1) in computing investment yield, and the amount (if any) by which the sum of the deductions allowable under section 804(c) exceeds the gross investment income.

[(10) SMALL BUSINESS DEDUCTION.—A small business deduction in an amount equal to the amount determined under section 804(a)(3).

[(11) OTHER DEDUCTIONS.—Subject to the modifications provided by subsection (e), all other deductions allowed under this subtitle for purposes of computing taxable income to the extent not allowed as deductions in computing investment yield.

[(12) DIVIDENDS REIMBURSED.—The deduction for the amount of dividends to policyholders reimbursed by the taxpayer to another insurance company in respect of policies the taxpayer has reinsured (determined under section 811(c)).

Except as provided in paragraph (3), no amount shall be allowed as a deduction under this subsection in respect of dividends to policyholders.

[(e) MODIFICATIONS.—The modifications referred to in subsection (d)(11) are as follows:

[(1) INTEREST.—In applying section 163 (relating to deduction for interest), no deduction shall be allowed for qualified guaranteed interest (within the meaning of section 805(f)(1)) or interest in respect of items described in section 810(c).

[(2) BAD DEBTS.—Section 166(c) (relating to reserve for bad debts) shall not apply.

[(3) CHARITABLE, ETC., CONTRIBUTIONS AND GIFTS.—In applying section 170—

[(A) the limit on the total deductions under such section provided by section 170(b)(2) shall be 10 percent of the gain from operations computed without regard to—

[(i) the deduction provided by section 170,

[(ii) the deductions provided by paragraphs (3), (5), (6), and (8) of subsection (d), and

[(iii) any operations loss carryback to the taxable year under section 812; and

[(B) under regulations prescribed by the Secretary, a rule similar to the rule contained in section 170(d)(2)(B) shall be applied.

[(4) Amortizable bond premium.—Section 171 shall not apply.

[(5) Net operating loss deduction.—Except as provided by section 844, the deduction for net operating losses provided in section 172 shall not be allowed.

[(6) Dividends received.—The deductions for dividends received provided by sections 243, 244, and 245 shall not be allowed.

[(f) Limitation on Certain Deductions.—

[(1) In General.—The amount of the deductions under paragraphs (3), (5), and (6) of subsection (d) shall not exceed $250,000 plus the amount (if any) by which—

[(A) the gain from operations for the taxable year, computed without regard to such deductions, exceeds

[(B) the taxable investment income for the taxable year.

[(2) Application of limitation.—The limitation provided by paragraph (1) shall apply first to the amount of the deduction under subsection (d)(3), then to the amount of the deduction under subsection (d)(6), and finally to the amount of the deduction under subsection (d)(5).

[(f) Limitation on Certain Deductions.—

[(1) In general.—The amount of the deductions under paragraphs (3), (5), and (6) of subsection (d) shall not exceed the greater of—

[(A) $1,000,000, plus the amount (if any) by which—

[(i) the gain from operations for the taxable year (computed without regard to such deductions), exceeds

[(ii) the taxable investment income for the taxable year, or

[(B) if the taxpayer elects for any taxable year, the amount determined under paragraph (2).

[(2) Alternative limitation.—The amount determined under this paragraph for any taxable year shall be equal to the sum of—

[(A) that portion of the deduction under subsection (d)(3) which is allocable to any contract described in section 805(d), and

[(B) an amount equal to the sum of—

[(i) so much of the base amount as does not exceed $1,000,000, plus

[(ii) in the case of—

[(I) a mutual life insurance company, 77.5 percent of the base amount, or

[(II) a stock life insurance company, 85 percent of the base amount.

[(3) Reduction in $1,000,000 amount for large insurers.—If the sum of the deductions under paragraphs (3), (5), and (6) of subsection (d) exceeds $4,000,000, then each of the $1,000,000 amounts in paragraphs (1) and (2) shall be reduced (but not below zero) by the amount which bears the same ratio to $1,000,000 as—

[(A) the amount of such excess bears to,

[(B) $4,000,000.

[(4) Base amount.—For purposes of paragraph (2)(B), the term "base amount" means the execess of—

[(A) the amount of the deduction under paragraphs (3) and (5) subsection (d) for the taxable year, over

[(B) the amount determined under paragraph (2)(A) for such taxable year.

[(5) Application of limitation.—The limitation provided by paragraph (1) shall apply first to the amount of the deduction under subsection (d)(3), then to the amount of the deduction under subsection (d)(5), and finally to the amount of the deduction under subsection (d)(6).

[SEC. 810. RULES FOR CERTAIN RESERVES.

[(a) Adjustment for Decrease.—If the sum of the items described in subsection (c) as of the beginning of the taxable year exceeds the sum of such items as of the close of the taxable year (reduced by the amount of investment yield not included in gain or loss from operations for the taxable year by reason of section 809(a)(1)), the excess shall be taken into account as a net decrease referred to in section 809(c)(2).

[(b) Adjustment for Increase.—If the sum of the items described in subsection (c) as of the close of the taxable year (reduced by the amount of the investment yield not included in gain or loss from the operations for the taxable year by reason of section 809(a)(1)) exceeds the sum of such items as of the beginning of the taxable year, the excess shall be taken into account as a net increase referred to in section 809(d)(2).

[(c) Items Taken Into Account.—The items referred to in subsection (a) and (b) are as follows:

[(1) The life insurance reserves (as defined in section 801(b)).

[(2) The unearned premiums and unpaid losses included in total reserves under section 801(c)(2).

[(3) The amounts (discounted at the rates of interest assumed by the company) necessary to satisfy the obligations under insurance or annuity contracts (including contracts supplementary thereto), but only if such obligations do not involve (at the time respect to which the computation is made under this paragraph) (life, health, or accident contingencies.

[(4) Dividend accumulations, and other amounts, held at interest in connection with insurance or annuity contracts (including contracts supplementary thereto).

[(5) Premiums received in advance, and liabilities for premium deposit funds.

[(6) Special contingency reserves under contracts of group term life insurance or group health and accident insurance which are established and maintained for the provision of insurance on retired lives, for premium stabilization, or for a combination thereof.

In applying his subsection, the same item shall be counted only once.

[(d) ADJUSTMENT FOR CHANGE IN COMPUTING RESERVES.—

[(1) IN GENERAL.—If the basis for determining any item referred to in subsection (c) as of the close of any taxable year differs from the basis for such determination as of the close of the preceding taxable year, then so much of the difference between—

[(A) the amount of the item at the close of the taxable year, computed on the new basis, and

[(B) the amount of the item at the taxable year, computed on the old basis, as is attributable to contracts issued before the taxable year shall be taken into account for purposes of this subpart as follows:

[(i) if the amount determined under subparagraph (A) exceeds the amount determined under subparagraph (B), 1/10 of such excess shall be taken into account, for each of the succeeding 10 taxable years, as a net increase to which section 809(d)(2) applies; or

[(ii) if the amount determined under subparagraph (B) exceeds the amount determined under subparagraph (A), 1/10 of such excess shall be taken into account for each of the 10 succeeding taxable years, as a net decrease to which section 809(c)(2) applies.

[(2) TERMINATION AS LIFE INSURANCE COMPANY.—Except as provided in section 381(c)(22) (relating to carryovers in certain corporate readjustments), if for any taxable year the taxpayer is not a life insurance company, the balance of any adjustments under this paragraph shall be taken into account for the preceding taxable year.

[(3) EFFECT OF PRELIMINARY TERM ELECTION.—An election under section 818(c) shall not be treated as a change in the basis for determining an item referred to in subsection (c) to which this subsection applies. If an election under section 818(c) applies of the taxable year, the amounts of the items referred to in subparagraphs (A) and (B) of paragraph (1) shall be determined without regard to such election. If such an election would apply in respect of such item for the taxable year but for the new basis, the amount of the item referred to in subparagraph (B) shall be determined on the basis which would have been applicable under section 818(c) if the election applied in respect of the item for the taxable year.

[SEC. 811. DIVIDENDS TO POLICYHOLDERS.

[(a) DIVIDEND TO POLICYHOLDERS DEFINED.—For purposes of this part, the term "dividends to policyholders" means dividends and similar distributions to policyholders in their capacity as such. Such term does not include interest paid (as defined in section 805(e)).

[(b) Amount Deduction.—

[(1) In general.—Except as limited by section 809(f), the deduction for dividends to policyholders for any taxable year shall be an amount equal to the dividends to policyholders paid during the taxable year—

[(A) increased by the excess of (i) the amounts held at the end of the taxable year as reserves for dividends to policiyholders (as defined in subsecton (a)) payable during the year following the taxable year, over (ii) such amounts held at the end of the preceding taxable year, or

[(B) decreased by the excess of (i) such amounts held at the end of the preceding taxable year, over (ii) such amounts held at the end of the taxable year.

For purposes of subparagraphs (A) and (B), there shall be included as amounts held at the end of any taxable year amounts set aside, before the 16th day of the third month of the year following such taxable year (or, in the case of a mutual savings bank subject to the tax imposed by section 594, before the 16th day of the fourth month of the year following such taxable year), for payment during the year following such taxable year.

[(2) Certain amounts to be treated as net decrease.—If the amount determined under paragraph (1)(B) exceeds the dividends to policyholders paid during the taxable year, the amount of such excess shall be a net decrease referred to in section 809(c)(2).

[(c) Special Rule for Dividends to Policyholders Under Reinsurance Contracts.—If, under the terms of a [conventional coinsurance] *reinsurance* contract, a life insurance company (hereinafter referred to as "the reinsurer") is obligated to reimburse another life insurance company (herinafter referred to as "the reinsured") for dividends to policyholders on the policies reinsured, the amount of the deduction for dividends reimbursed shall, for purposes of section 809(d)(12), be equal to the amount of dividends to policyholders—

[(1) which were paid by the reinsured, and

[(2) with respect to which the reinsurer reimbursed the reinsured under the terms of such contract.

The amount determined under the preceding sentence shall be properly adjusted to reflect the adjustments under subsection (b)(1).

[SEC. 812. OPERATIONS LOSS DEDUCTION.

[(a) Deduction Allowed.—There shall be allowed as a deduction for the taxable year an amount equal to the aggregate of—

[(1) the operations loss carryovers to such year, plus

[(2) the operations loss carrybacks to such year.

For purposes of this part, the term "operations loss deduction" means the deduction allowed by this subsection.

[(b) Operations Loss Carrybacks and Carryovers.—

[(1) Years to which loss may be carried.—The loss from operations for any taxable year (hereinafter in this section referred as the "loss year") shall be—

[(A) an operations loss carryback to each of the 3 taxable years preceding the loss year, [(B) an operations loss carryover to each of the 5 taxable years following the loss year, and

[(C) subject to subsection (e), if the life insurance company is a new company for the loss year, an operations loss carryover to each of the 3 taxable years following the 5 taxable years described in subparagraph (B).

In the case of an operations loss for any taxable year ending after December 31, 1975, this paragraph shall be applied by substituting "15 taxable years" for "5 taxable years".

[(2) AMOUNT OF CARRYBACKS AND CARRYOVERS.—The entire amount of the loss from operations for any loss year shall be carried to the earliest of the taxable years to which (by reason of paragraph (1)) such loss may be carried. The portion of such loss which shall be carried to each of the other taxable years shall be the excess (if any) of the amount of such loss over the sum of the offsets (as defined in subsection (d)) for each of the prior taxable years to which such loss may be carried.

[(3) ELECTION FOR OPERATIONS LOSS CARRYBACKS.—In the case of a loss from operations for any taxable year ending after December 31, 1975, the taxpayer may elect to relinquish the entire carryback period for such loss. Such election shall be made by the due date (including extensions of time) for filing the return for the taxable year of the loss from operations for which the election is to be in effect, and once made for any taxable year, such election shall be irrevocable for that taxable year.

[(c) COMPUTATION OF LOSS FROM OPERATIONS.—In computing the loss from operations for purposes of this section—

[(1) The operations loss deduction shall not be allowed.

[(2) The deductions allowed by sections 243 (relating to dividends received by corporations), 244 (relating to dividends received on certain preferred stock of public utilities), and 245 (relating to dividends received from certain foreign corporations) shall be computed without regard to section 246(b) as modified by section 809(d)(8)(B).

[(d) OFFSET DEFINED.—

[(1) IN GENERAL.—For purposes of subsection (b)(2), the term "offset" means, with respect to any taxable year, an amount equal to that increase in the operations loss deduction for the taxable year which reduces the life insurance company taxable income (computed without regard to section 802(b)(3)) for such year to zero.

[(2) OPERATIONS LOSS DEDUCTION.—For purposes of paragraph (1), the operations loss deduction for any taxable year shall be computed without regard to the loss from operations for the loss year or for any taxable year thereafter.

[(e) NEW COMPANY DEFINED.—For purposes of this part, a life insurance company is a new company for any taxable year only if such taxable year begins not more than 5 years after the first day on which it (or any predecessor, if section 381(c)(22) applies or would have applied if in effect) was authorized to do business as an insurance company.

[(f) APPLICATION OF SUBTITLE A AND SUBTITLE F.—Except as provided in section 809(e), subtitle A and subtitle F shall apply in respect of operations loss carrybacks, operations loss carryovers, and the operations loss deduction under this part in the same manner and to the same extent as such subtitles apply in respect of net operating loss carrybacks, net operating loss carryovers, and the net operating loss deduction.

[Subpart D—Distributions to Shareholders

[Sec. 815. Distributions to shareholders.

[SEC. 815. DISTRIBUTIONS TO SHAREHOLDERS.

[(a) General Rule.—For purposes of this section and section 802(b)(3), any distribution to shareholders after December 31, 1958, shall be treated as made—

[(1) first out of the shareholders surplus account, to the extent thereof,

[(2) then out of the policyholders surplus account, to the extent thereof, and

[(3) finally out of other accounts.

[(b) Shareholders Surplus Account.—

[(1) In general.—Each stock life insurance company shall, for purposes of this part, establish and maintain a shareholders surplus account. The amount in such account on January 1, 1958, shall be zero.

[(2) Additions to account.—The amount added to the shareholders surplus account for any taxable year beginning after December 31, 1957, shall be the amount by which—

[(A) the sum of—

[(i) the life insurance company taxable income (computed without regard to section 802(b)(3)),

[(ii) in the case of a taxable year beginning after December 31, 1958, the amount (if any) of the net capital gain, reduced (in the case of a taxable year beginning after December 31, 1961) by the amount referred to in clause (i),

[(iii) the deductions for dividends received provided by sections 243, 244, and 245 (as modified by section 809(d)(8)(B)) and the amount of interest excluded from gross income under section 103, and

[(iv) the small business deduction provided by section 809(d)(10), exceeds

[(B) the taxes imposed for the taxable year by section 802(a), determined without regard to section 802(b)(3).

[(3) Subtractions from account.—

[(A) In general.—There shall be subtracted from the shareholders surplus account for any taxable year the amount which is treated under this section as distributed out of such account.

[(B) Distributions in 1958.—There shall be subtracted from the shareholders surplus account (to the extent thereof) for any taxable year beginning in 1958 the amount of distributions to shareholders made during 1958.

[(c) Policyholders Surplus Account.—

[(1) In general.—Each stock life insurance company shall, for purposes of this part, establish and maintain a policyholders surplus account. The amount in such account on January 1, 1959, shall be zero.

[(2) Additions to account.—The amount added to the policyholders surplus account for any taxable year beginning after December 31, 1958, shall be the sum of—

[(A) an amount equal to 50 percent of the amount by which the gain from operations exceeds the taxable investment income,

[(B) the deduction for certain nonparticipating contracts provided by section 809(d)(5) (as limited by section 809(f)), and

[(C) the deduction for accident and health insurance and group life insurance contracts provided by section 809(d)(6) (as limited by section 809(f)).

[(3) Subtractions from account.—There shall be subtracted from the policyholders surplus account for any taxable year an amount equal to the sum of—

[(A) the amount which (without regard to subparagraph (B)) is treated under this section as distributed out of the policyholders surplus account, and

[(B) the amount by which the tax imposed for the taxable year by section 802(a) is increased by reason of section 802(b)(3).

[(d) Special Rules.—

[(1) Election to transfer amounts from policyholders surplus account to shareholders surplus account.—

[(A) In general.—A taxpayer may elect for any taxable year for which it is a life insurance company to subtract from its policyholders surplus account any amount in such account as of the close of such taxable year. The amount so subtracted, less the amount of the tax imposed with respect to such amount by reason of section 802(b)(3), shall be added to the shareholders surplus account as of the beginning of the succeeding taxable year.

[(B) Manner and effect of election.—The election provided by subparagraph (A) shall be made (in such manner and in such form as the Secretary may by regulations prescribe) after the close of the taxable year and not later than the time prescribed by law for filing the return (including extensions thereof) for the taxable year. Such an election, once made, may not be revoked.

[(2) Termination as life insurance company.—

[(A) Effect of termination.—Except as provided in section 381(c)(22) (relating to carryovers in certain corporate readjustments), if—

[(i) for any taxable year the taxpayer is not an insurance company, or

[(ii) for any two successive taxable years the taxpayer is not a life insurance company, then the amount taken into account under section 802(b)(3) for the last preceding taxable year for which it was a life insurance company shall be increased (after the application of subparagraph (B)) by the amount remaining in its policyholders surplus account at the close of such last preceding taxable year.

[(B) Effect of certain distributions.—If for any taxable year the taxpayer is an insurance company but not a life insurance company, then any distribution to shareholders during such taxable year shall be treated as made on the last day of the last preceding taxable year for which the taxpayer was a life insurance company.

[(3) Treatment of certain indebtedness.—If—

[(A) the taxpayer makes any payment in discharge of its indebtedness, and

[(B) such indebtedness is attributable to a distribution by the taxpayer to its shareholders after February 9, 1959,

then the amount of such payment shall, for purposes of this section and section 802(b)(3), be treated as a distribution in cash to shareholders, but only to the extent that the distribution referred to in subparagraph (B) was treated as made out of accounts other than the shareholders and policyholders surplus accounts.

[(4) Limitation on amount in policyholders surplus account.—There shall be treated as a subtraction from the policyholders surplus account for a taxable year for which the taxpayer is a life insurance company the amount by which the policyholders surplus account (computed at the end of the taxable year without regard to this paragraph) exceeds whichever of the following is the greatest—

[(A) 15 percent of life insurance reserves at the end of the taxable year,

[(B) 25 percent of the amount by which the life insurance reserves at the end of the taxable year exceed the life insurance reserves at the end of 1958, or

[(C) 50 percent of the ne amount of the premiums and other consideration taken into account for the taxable year under section 809(c)(1).

The amount so treated as subtracted, less the amount of the tax imposed with respect to such amount by reason of section 802(b)(3), shall be added to the shareholders surplus account as of the beginning of the succeeding taxable year.

[(5) Reduction of policyholders surplus account for certain unused deductions.—If—

[(A) an amount added to the policyholders surplus account for any taxable year increased (or created) a loss from operations for such year, and

[(B) any portion of the increase (or amount created) in the loss from operations referred to in subparagraph (A) did not reduce the life insurance company taxable income for any taxable year to which such loss was carried,

the policyholders surplus account for the taxable year referred to in subparagraph (A) shall be reduced by the amount described in subparagraph (B).

[(6) Restoration of amounts distributed out of policyholders surplus account.—Notwithstanding any other provision of this subchapter, no amount shall be subtracted from a taxpayer's policyholders surplus account with respect to a distribution made during the last month of the taxable year which, without regard to this paragraph, would be treated in whole or in part as a distribution out of the policyholders surplus account, to the extent that amounts so distributed are returned to the taxpayer no later than the time prescribed by law (including extensions thereof) for filing the taxpayer's return for the taxable year in which the distribution was made. For purposes of this paragraph, amounts returned to a taxpayer with respect to a distribution shall be first applied to the return of amounts which, without regard to this paragraph, would have been treated as distributed out of the policyholders surplus account. This paragraph shall not apply if, at the time such distribution was made, the taxpayer intended to avail itself of the provisions of this paragraph by having its shareholders return all or a part of such distribution. Nothing in this paragraph shall affect the tax treatment of the receipt of the distribution by any shareholder, and the basis to a shareholder of his stock in the taxpayer shall not be increased by reason of amounts returned under this paragraph to the extent that a dividends received deduction or exclusion was allowable in respect of the distribution of such amount under any provision of this title.

[(e) SPECIAL RULE FOR CERTAIN MUTUALIZATIONS.—

[(1) IN GENERAL.—For purposes of this section and section 802(b)(3), any distribution to shareholders after December 31, 1958, in acquisition of stock pursuant to a plan of mutualization shall be treated—

[(A) first, as made out of paid-in capital and paid-in surplus, to the extent thereof,

[(B) thereafter, as made in two allocable parts—

[(i) one part of which is made out of the other accounts referred to in subsection (a)(3), and

[(ii) the remainder of which is a distribution to which subsection (a) applies.

[(2) SPECIAL RULES.—

[(A) ALLOCATION RATIO.—The part referred to in paragraph (1)(B)(i) is the amount which bears the same ratio to the amount to which paragraph (1)(B) applies as—

[(i) the excess (determined as of December 31, 1958, and adjusted to the beginning of the year of the distribution as provided in subparagraph (B)) of the assets over the total liabilities, bears to

[(ii) the sum (determined as of the beginning of the year of the distribution) of the excess described in clause (i), the amount in the shareholders surplus account, plus the amount in the policyholders surplus account.

[(B) ADJUSTMENT FOR CERTAIN DISTRIBUTIONS.—The excess described in subparagraph (A)(i) shall be reduced by the aggregate of the prior distributions which have been treated under subsection (a)(3) as made out of accounts other than the shareholders surplus account and the policyholders surplus account.

[(f) DISTRIBUTION DEFINED.—For purposes of this section, the term "distribution" includes any distribution in redemption of stock or in partial or complete liquidation of the corporation, but does not include—

[(1) any distribution made by the corporation in its stock or in rights to acquire its stock;

[(2) except for purposes of subsection (a)(3) and subsection (e)(2)(B), any distribution in redemption of stock issued before 1958 which at all times on and after the date of issuance and on and before the date of redemption is limited as to dividends and is callable, at the option of the issuer, at a price not in excess of 105 percent of the sum of the issue price and the amount of any contribution to surplus made by the original purchaser at the time of his purchase;

[(3) any distribution after December 31, 1963, of the stock of a controlled corporation to which section 355 applies, if such controlled corporation is an insurance company subject to the tax imposed by section 831 and if—

[(A) control was acquired prior to January 1, 1958, or

[(B) control has been acquired after December 31, 1957—

[(i) in a transaction qualifying as a reorganization under section 368(a)(1)(B), if the distributing corporation has at all times since December 31, 1957, owned stock representing not less than 50 percent of the total combined voting power of all classes of stock entitled to vote, and not less than 50 percent of the value of all classes of stock, of the controlled corporation, or

[(ii) solely in exchange for stock of the distributing corporation which stock is immediately exchanged by the controlled corporation in a transaction qualifying as a reorganization under section 368(a)(1) (A) or (C), if the controlled corporation has at all times since its organization been wholly owned by the distributing corporation and the distributing corporation has at all times since December 31, 1957, owned stock representing not less than 50 percent of the total combined voting power of all classes of stock entitled to vote, and not less than 50 percent of the value of all classes of stock, of the corporation the assets of which have been transferred to the controlled corporation in section 368(a)(1) (A) or (C) reorganization;

[(4) any distribution after December 31, 1966, of the stock of a controlled corporation to which section 355 applies, if such distribution is made to a corporation which immediately after the distribution is in control (within the meaning of section 368(c)) of both the distributing corporation and such controlled corporation and if such controlled corporation is a life insurance company of which the distributing corporation has been in control at all times since December 31, 1957; or

[(5) any distribution after December 31, 1968, of the stock of a controlled corporation to which section 355 applies, if such distribution is made to a corporation which immediately after the distribution is the owner of all of the stock of all classes of both the distributing corporation and such controlled corporation and if, immediately before the distribution, the distributing corporation had been the owner of all of the stock of all classes of such controlled corporation at all times since December 31, 1957.

Paragraphs (3), (4), and (5) shall not apply to that portion of the distribution of stock of the controlled corporation equal to the increase in the aggregate adjusted basis of such stock after December 31, 1957, except to the extent such increase results from an acquisition of stock in the controlled corporation in a transaction described in paragraph (3)(B). If any part of the increase in the aggregate adjusted basis of stock of the controlled corporation after December 31, 1957, results from the transfer (other than as part of a transaction described in paragraph (3)(B)) by the distributing corporation to the controlled corporation of property which has a fair market value in excess of its adjusted basis at the time of the transfer, paragraphs (3), (4), and (5) also shall not apply to that portion of the distribution equal to such excess.

[(g) CERTAIN DISTRIBUTIONS RELATED TO FORMER SUBSIDIARIES.—If subsection (f)(5) applied to the distribution by a life insurance company of the stock of a corporation which was a controlled corporation—

[(1) any distribution by such corporation to its shareholders (after the date of the distribution of its stock by the life insurance company), and

[(2) any disposition of the stock of such corporation by the distributee corporation,

shall, for purposes of this section, be treated as a distribution to its shareholders by such life insurance company, until the amounts so treated equal the amount of the distribution of such stock which by reason of subsection (f)(5) was not included as a distribution for purposes of this section.

[Subpart E—Miscellaneous Provisions

[Sec. 817. Rules relating to certain gains and losses.
[Sec. 818. Accounting provisions.
[Sec. 819. Foreign life insurance companies.
[Sec. 819A. Contiguous country branches of domestic life insurance companies.

[SEC. 817. RULES RELATING TO CERTAIN GAINS AND LOSSES.

[(a) TREATMENT OF CAPITAL GAINS AND LOSSES, ETC.—In the case of a life insurance company—

[(1) in applying section 1231(a), the term "property used in the trade or business" shall be treated as including only—

[(A) property used in carrying on an insurance business, of a character which is subject to the allowance for depreciation provided in section 167, held for more than 1 year, and real property used in carrying on an insurance business, held for more than 1 year, which is not described in section 1231(b)(1) (A), (B), or (C), and

[(B) property described in section 1231(b)(2), and

[(2) in applying section 1221(2), the reference to property used in trade or business shall be treated as including only property used in carrying on an insurance business.

[(b) GAIN ON PROPERTY HELD ON DECEMBER 31, 1958 AND CERTAIN SUBSTITUTED PROPERTY ACQUIRED AFTER 1958.—

[(1) PROPERTY HELD ON DECEMBER 31, 1958.—In the case of property held by the taxpayer on December 31, 1958, if—

[(A) the fair market value of such property on such date exceeds the adjusted basis for determining gain as of such date, and

[(B) the taxpayer has been a life insurance company at all times on and after December 31, 1958,

the gain on the sale or other disposition of such property shall be treated as an amount (not less than zero) equal to the amount by which the gain (determined without regard to this subsection) exceeds the difference between the fair market value on December 31, 1958, and the adjusted basis for determining gain as of such date.

[(2) CERTAIN PROPERTY ACQUIRED AFTER DECEMBER 31, 1958.—In the case of property acquired after December 31, 1958, and having a substituted basis (within the meaning of section 1016(b))—

[(A) for purposes of paragraph (1), such property shall be deemed held continuously by the taxpayer since the beginning of the holding period thereof, determined with reference to section 1223,

[(B) the fair market value and adjusted basis referred to in paragraph (1) shall be that of that property for which the holding period taken into account includes December 31, 1958.

[(C) paragraph (1) shall apply only if the property or properties the holding periods of which are taken into account were held only by life insurance companies after December 31, 1958, during the holding periods so taken into account,

[(D) the difference between the fair market value and adjusted basis referred to in paragraph (1) shall be reduced (not less than zero) by the excess of (i) the gain that would have been recognized but for this subsection on all prior sales or dispositions after December 31, 1958, of properties referred to in subparagraph (C), over (ii) the gain that was recognized on such sales or other dispositions, and

[(E) the basis of such property shall be determined as if the gain which would have been recognized but for this subsection were recognized gain.

[(3) PROPERTY DEFINED.—For purposes of paragraphs (1) and (2), the term "property" does not include insurance and annuity contracts (and contracts supplementary thereto) and property described in paragraph (1) of section 1221.

[SEC. 818. ACCOUNTING PROVISIONS.

[(a) METHOD OF ACCOUNTING.—All computations entering into the determination of the taxes imposed by this part shall be made—

[(1) under an accrual method of accounting, or

[(2) to the extent permitted under regulations prescribed by the Secretary, under a combination of an accrual method of accounting with any other method permitted by this chapter (other than the cash receipts and disbursements method).

Except as provided in the preceding sentence, all such computations shall be made in a manner consistent with the manner required for purposes of the annual statement approved by the National Association of Insurance Commissioners.

[(b) AMORTIZATION OF PREMIUM AND ACCRUAL OF DISCOUNT.—

[(1) IN GENERAL.—The appropriate items of income, deductions, and adjustments under this part shall be adjusted to reflect the appropriate amortization of premium and the appropriate accrual of discount attributable to the taxable year on bonds, notes, debentures, or other evidences of indebtedness held by a life insurance company. Such amortization and accrual shall be determined—

[(A) in accordance with the method regularly employed by such company, if such method is reasonable, and

[(B) in all other cases, in accordance with regulations prescribed by the Secretary or his delegate.

[(2) SPECIAL RULES.—

[(A) AMORTIZATION OF BOND PREMIUM.—In the case of any bond (as defined in section 171(d)) acquired after December 31, 1957, the amount of bond premium, and the amortizable bond premium for the taxable year, shall be determined under section 171(b) as if the election set forth in section 171(c) had been made.

[(B) CONVERTIBLE EVIDENCES OF INDEBTEDNESS.—In no case shall the amount of premium on a convertible evidence of indebtedness include any amount attributable to the conversion features of the evidence of indebtedness.

[(3) EXCEPTION.—For taxable years beginning after December 31, 1962, no accrual of discount shall be required under paragraph (1) on any bond (as defined in section 171(d)), except in the case of discount which is—

[(A) interest to which section 103 applies, or

[(B) original issue discount (as defined in section 1232(b)).

For purposes of section 805(b)(3)(A), the current earnings rate for any taxable year beginning before Janauary 1, 1963, shall be determined as if the preceding sentence applied to such taxable year.

[(c) LIFE INSURANCE RESERVES COMPUTED ON PRELIMINARY TERM BASIS.—For purposes of this part (other than section 801), at the election of the taxpayer the amount taken into account as life insurance reserves with respect to contracts for which such reserves are computed on a preliminary term basis may be determined on either of the following bases;

[(1) EXACT REVALUATION.—As if the reserves for all such contracts had been computed on a net level premium basis (using the same mortality assumptions and interest rates for both the preliminary term basis and the net level premium basis).

[(2) APPROXIMATE REVALUATION.—The amount computed without regard to this subsection—

[(A) increased by $19 per $1,000 of insurance in force (other than term insurance) under such contracts, less 1.9 percent of reserves under such contracts, and

[(B) increased by $5 per $1,000 of term insurance in force under such contracts which at the time of issuance cover a period of more than 15 years, less 0.5 percent of reserves under such contracts.

If the taxpayer makes an election under either paragraph (1) or (2) for any taxable year, the basis adopted shall be adhered to in making the computations under this part (other than section 801) for the taxable year and all subsequent taxable years unless a change in the basis of computing such reserves is approved by the Secretary, except that if, pursuant to an election made for a taxable year beginning in 1958 or in effect for a taxable year beginning in 1981, the basis adopted is the basis provided in paragraph (2), the taxpayer may adopt the basis provided by paragraph (1) for its first taxable year beginning after 1958 or 1981, whichever is applicable.

[(d) Short Taxable Years.—If any return of a corporation made under this part is for a period of less than the entire calendar year (referred to in this subsection as "short period"), then section 443 shall not apply in respect to such period, but—

[(1) the taxable investment income and the gain or loss from operations shall be determined, under regulations prescribed by the Secretary, on an annual basis by a ratable daily projection of the appropriate figures for the short period.

[(2) that portion of the life insurance company taxable income described in paragraphs (1) and (2) of section 802(b) shall be determined on an annual basis by treating the amounts ascertained under paragraph (1) as the taxable investment income and the gain or loss from operations for the taxable year, and

[(3) that portion of the life insurance company taxable income described in paragraphs (1) and (2) of section 802(b) for the short period shall be the amount which bears the same ratio to the amount ascertained under paragraph (2) as the number of days in the short period bears to the number of days in the entire calendar year.

[(e) Denial of Double Deductions.—Nothing in this part shall permit the same item to be deducted more than once under subpart B and once under subpart C.

[(f) Computation on Consolidated Returns of Policyholders' Share of Investment Yield.—For purposes of this part, in the case of a life insurance company filing or required to file a consolidated return under section 1501 for a taxable year, the computations of the policyholders' share of investment yield under subparts B and C (including all determinations and computations incident thereto) shall be made as if such company were not filing a consolidated return.

[(f) Special Rules for Consolidated Return Computations.—For purposes of this part, in the case of a life insurance company filing or required to file a consolidated return under section 1501 for a taxable year, the following rules shall apply:

[(1) POLICYHOLDERS' SHARE OF INVESTMENT YIELD.—The computation of the policyholders' share of investment yield under subparts B and C (including all determinations and computations incident thereto) shall be made as if such company were not filing a consolidated return.

[(2) LIFE INSURANCE COMPANY TAXABLE INCOME.—

[(A) IN GENERAL.—The amount of the consolidated life insurance company taxable income under paragraphs (1) and (2) of section 802(b) shall be determined by taking into account the life insurance company taxable income (including any case where deductions exceed income) of each life insurance company which is a member of the group (as computed separately under such paragraphs).

[(B) CERTAIN AMOUNTS COMPUTED SEPARATELY.—For purposes of subparagraph (A), the determination of a life insurance company's taxable investment income and gain or loss from operations (after applying the limitation provided by section 809(f)) shall be made without regard to the taxable investment income or gain or loss from operations of any other such company.

[(3) CONSOLIDATED NET CAPITAL GAIN.—If there is a consolidated net capital gain, then the partial tax referred to in section 802(a)(2)(A) shall be computed on—

[(A) the consolidated life insurance company taxable income, reduced (but not below the sum of the amounts determined under section 802(b)(3)) by

[(B) the amount of such consolidated net capital gain.

[(g) ALLOCATION IN CASE OF REINSURANCE AGREEMENT INVOLVING TAX AVOIDANCE OR EVASION.—In the case of 2 or more related persons (within the meaning of section 1239(b)) who are parties to a reinsurance agreement, the Secretary may—

[(1) allocate between or among such persons income (whether investment income, premium, or otherwise), deductions, assets, reserves, credits, and other items related to such agreement, or

[(2) recharacterize any such items,

if he determines that such allocation or recharacterization is necessary to reflect the proper source and character of the taxable income (or any item described in paragraph (1) relating to such taxable income) of each such person.

[(h) METHOD OF COMPUTING RESERVES ON CONTRACT WHERE INTEREST IS GUARANTEED BEYOND END OF TAXABLE YEAR.—For purposes of this part (other than section 801), interest payable under any contract which is computed at a rate which—

[(1) is in excess of the lowest rates which are assumed under such contract for any period in calculating the reserves under section 810(c) for the contract under which such interest is payable, and

[(2) is guaranteed beyond the end of the taxable year on which the reserves are being computed,

shall be taken into account in computing the reserves with respect to such contract as if such interest were guaranteed only up to the end of the taxable year.

[SEC. 819. FORIEGN LIFE INSURANCE COMPANIES.

[(a) ADJUSTMENT WHERE SURPLUS HELD IN UNITED STATES IS LESS THAN SPECIFIED MINIMUM.—

[(1) IN GENERAL.—In the case of any foreign corporation taxable under this part, if the minimum figure determined under paragraph (2) exceeds the surplus held in the United States, then—

[(A) the amount of the policy and other contract liability requirements (determined under section 805 without regard to this subsection), and

[(B) the amount of the required interest (determined under section 809(a)(2) without regard to this subsection), shall each be reduced by an amount determined by multiplying such excess by the current earnings rate (as defined in section 805(b)(2)).

[(2) DEFINITIONS.—For purposes of paragraph (1)—

[(A) The minimum figure is the amount determined by multiplying the taxpayer's total insurance liabilities on United States business by a percentage for the taxable year to be determined and proclaimed by the Secretary.

The percentage determined and proclaimed by the Secretary under the preceding sentence shall be based on such data with respect to domestic life insurance companies for the preceding taxable year as the Secretary considers representative. Such percentage shall be computed on the basis of a ratio the numerator of which is the excess of the assets over the total insurance liabilities, and the denominator of which is the total insurance liabilities.

[(B) The surplus held in the United States is the excess of the assets held in the United States over the total insurance liabilities on United States business.

For purposes of this paragraph and subsection (b), the term "total insurance liabilities" means the sum of the total reserves (as defined in section 801(c)) plus (to the extent not included in total reserves) the items referred to in paragraphs (3), (4), and (5) of section 810(c).

[(3) REDUCTION OF SECTION 881 TAX.—In the case of any foreign corporation taxable under this part, there shall be determined—

[(A) the amount which would be subject to tax under section 881 if the amount taxable under such section were determined without regard to sections 103 and 894, and

[(B) the amount of the reduction provided by paragraph (1).

The tax under section 881 (determined without regard to this paragraph) shall be reduced (but not below zero) by an amount which is the same proportion of such tax as the amount referred to in subparagraph (B) is of the amount referred to in subparagraph (A); but such reduction in tax shall not exceed the increase in tax under this part by reason of the reduction provided by paragraph (1).

[(b) DISTRIBUTIONS TO SHAREHOLDERS.—

[(1) IN GENERAL.—In applying sections 802(b)(3) and 815 with respect to a foreign corporation, the amount of the distributions to shareholders shall be determined by multiplying the total amount of the distributions to shareholders (within the meaning of section 815) of the foreign corporation by whichever of the following percentages is selected by the taxpayer for the taxable year:

[(A) the percentage which the minimum figure for the taxable year (determined under subsection (a)(2)(A)) is of the excess of the assets of the company over the total insurance liabilities; or

[(B) the percentage which the total insurance liabilities on United States business for the taxable year is of the company's total insurance liabilities.

[(2) DISTRIBUTIONS PURSUANT TO CERTAIN MUTUALIZATIONS.—In applying section 815(e) with respect to a foreign corporation—

[(A) the paid-in capital and paid-in surplus referred to in section 815(e)(1)(A) of a foreign corporation is the portion of such capital and surplus determined by multiplying such capital and surplus by the percentage selected for the taxable year under paragraph (1); and

[(B) the excess referred to in section 815(e)(2)(A)(i) (without the adjustment provided by section 815(e)(2)(B)) is whichever of the following is the greater:

[(i) the minimum figure for 1958 determined under subsection (a)(2)(A) computed by using a percentage of 9 percent in lieu of the percentage determined and proclaimed by the Secretary, or

[(ii) the surplus described in subsection (a)(2)(B) (determined as of December 31, 1958).

[(c) CROSS REFERENCE.—

[For taxation of foreign corporations carrying on life insurance business within the United States, see section 842.

SEC. 819A. CONTIGUOUS COUNTRY BRANCHES OF DOMESTIC LIFE INSURANCE COMPANIES

[(a) EXCLUSION OF ITEMS.—In the case of a domestic mutual insurance company which—

[(1) is a life insurance company,

[(2) has a contiguous country life insurance branch, and

[(3) makes the election provided by subsection (g) with respect to such branch,

there shall be excluded from each and every item involved in the determination of life insurance company taxable income the items separately accounted for in accordance with subsection (c).

[(b) CONTIGUOUS COUNTRY LIFE INSURANCE BRANCH.—For purposes of this section, the term "contiguous country life insurance branch" means a branch which—

[(1) issues insurance contracts insuring risks in connection with the lives or health of residents of a country which is contiguous to the United States,

[(2) has its principal place of business in such contiguous country, and

[(3) would constitute a mutual life insurance company if such branch were a separate domestic insurance company.

For purposes of this section, the term "insurance contract" means any life, health, accident, or annuity contract or reinsurance contract or any contract relating thereto.

[(c) SEPARATE ACCOUNTING REQUIRED.—Any taxpayer which makes the election provided by subsection (g) shall establish and maintain a separate account for the various income, exclusion, deduction, asset, reserve, liability, and surplus items properly attributable to the contracts described in subsection (b). Such separate accounting shall be made—

[(1) in accordance with the method regularly employed by such company, if such method clearly reflects income derived from, and the other items attributable to, the contracts described in subsection (b), and

[(2) in all other cases, in accordance with regulations prescribed by the Secretary.

[(d) RECOGNITION OF GAIN ON ASSETS IN BRANCH ACCOUNT.—If the aggregate fair market value of all the invested assets and tangible property which are separately accounted for by the domestic life insurance company in the branch account established pursuant to subsection (c) exceeds the aggregate adjusted basis of such assets for purposes of determining gain, then the domestic life insurance company shall be treated as having sold all such assets on the first day of the first taxable year for which the election is in effect at their fair market value on such first day. Notwithstanding any other provision of this chapter, the net gain shall be recognized to the domestic life insurance company on the deemed sale described in the preceding sentence.

[(e) TRANSACTIONS BETWEEN CONTIGUOUS COUNTRY BRANCH AND DOMESTIC LIFE INSURANCE COMPANY.—

[(1) REIMBURSEMENT FOR HOME OFFICE SERVICES, ETC.—Any payment, transfer, reimbursement, credit, or allowance which is made from a separate account established pursuant to subsection (c) to one or more other accounts of a domestic life insurance company as reimbursement for costs incurred for or with respect to the insurance (or reinsurance) of risks accounted for in such separate account shall be taken into account by the domestic life insurance company in the same manner as if such payment, transfer, reimbursement, credit, or allowance had been received from a separate person.

[(2) REPATRIATION OF INCOME.—

[(A) IN GENERAL.—Except as provided in subparagraph (B), any amount directly or indirectly transferred or credited from a branch account established pursuant to subsection (c) to one or more other accounts of such company shall, unless such transfer or credit is a reimbursement to which paragraph (1) applies, be added to the life insurance company taxable income of the domestic life insurance company (as computed without regard to this paragraph).

[(B) LIMITATION.—The addition provided by subparagraph (A) for the taxable year with respect to any contiguous country life insurance branch shall not exceed the amount by which—

[(i) the aggregate decrease in the life insurance company taxable income of the domestic life insurance company for the taxable year and for all prior taxable years resulting solely from the application of subsection (a) of this section with respect to such branch, exceeds

[(ii) the amount of additions to life insurance company taxable income pursuant to subparagraph (A) with respect to such contiguous country branch for all prior taxable years.

[(f) Other Rules.—

[(1) Treatment of foreign taxes.—

[(A) In general.—No income, war profits, or excess profits taxes paid or accrued to any foreign country or possession of the United States which is attributable to income excluded under subsection (a) shall be taken into account for purposes of subpart A of part III of subchapter N (relating to foreign tax credit) or allowable as a deduction.

[(B) Treatment of repatriated amounts.—For purposes of sections 78 and 902, where any amount is added to the life insurance company taxable income of the domestic life insurance company by reason of subsection (e)(2), the contiguous country life insurance branch shall be treated as a foreign corporation. Any amount so added shall be treated as a dividend paid by a foreign corporation, and the taxes paid to any foreign country or possession of the United States with respect to such amount shall be deemed to have been paid by such branch.

[(2) United States source income allocable to contiguous country branch.—For purposes of sections 881, 882 and 1442, each contiguous country life insurance branch shall be treated as a foreign corporation. Such sections shall be applied to each such branch in the same manner as if such sections contained the provisions of any treaty to which the United States and the contiguous country are parties, to the same extent such provisions would apply if such branch were incorporated in such contiguous country.

[(g) Election.—A taxpayer may make the election provided by this subsection with respect to any contiguous country for any taxable year beginning after December 31, 1975. An election made under this subsection for any taxable year shall remain in effect for all subsequent taxable years, except that it may be revoked with the consent of the Secretary. The election provided by this subsection shall be made not later than the time prescribed by law for filing the return for the taxable year (including extensions thereof) with respect to which such election is made, and such election and any approved revocation thereof shall be made in the manner provided by the Secretary.

[(h) Special Rule for Domestic Stock Life Insurance Companies.—At the election of a domestic stock life insurance company which has a contiguous country life insurance branch described in subsection (b) (without regard to the mutual requirement in subsection (b)(3)), the assets of such branch may be transferred to a foreign corporation organized under the laws of the contiguous country without the application of section 367 or 1491. Subsection (a) shall apply to the stock of such foreign corporation as if such domestic company were a mutual company and as if the stock were an item described in subsection (c). Subsection (e)(2) shall apply to amounts transferred or credited to such domestic company as if such domestic company and such foreign corporation constituted one domestic mutual life insurance company. The insurance contracts which may be transferred pursuant to this subsection shall include only those which are similar to the types of insurance contracts issued by a mutual life insurance company. Notwithstanding the first sentence of this subsection, if the aggregate fair market value of the invested assets and tangible property which are separately accounted for by the domestic life insurance company in the branch account exceeds the aggregate adjusted basis of such assets for purposes of determining gain, the domestic life insurance company shall be deemed to have sold all such assets on the first day of the taxable year for which the election under this subsection applies and the net gain shall be recognized to the domestic life insurance company on the deemed sale, but not in excess of the proportion of such net gain which equals the proportion which the aggregate fair market value of such assets which are transferred pursuant to this subsection is of the aggregate fair market value of all such assets.]

PART I—LIFE INSURANCE COMPANIES

Subpart A. Tax imposed.
Subpart B. Life insurance gross income.
Subpart C. Life insurance deductions.
Subpart D. Accounting allocation, and foreign provisions.
Subpart E. Definitions and special rules.

Subpart A—Tax Imposed

Sec. 801. Tax imposed.

SEC. 801. TAX IMPOSED.

(a) TAX IMPOSED.—

(1) IN GENERAL.—A tax is hereby imposed for each taxable year on the life insurance company taxable income of every life insurance company. Such tax shall consist of a tax computed as provided in section 11 as though the life insurance company taxable income were the taxable income referred to in section 11.

(2) ALTERNATIVE TAX IN CASE OF CAPITAL GAINS.—

(A) IN GENERAL.—If a life insurance company has a net capital gain for the taxable year, then (in lieu of the tax imposed by paragraph (1)), there is hereby imposed a tax (if such tax is less than the tax imposed by paragraph (1)).

(B) AMOUNT OF TAX.—The amount of the tax imposed by this paragraph shall be the sum of—

(i) a partial tax, computed as provided by paragraph (1), on the life insurance company taxable income reduced by the amount of such net capital gain, and

(ii) an amount determined as provided in section 1201(a) on such net capital gain.

(C) Net capital gain not taken into account in determining special life insurance company deduction and small life insurance company deduction.—For purposes of subparagraph (B)(i), the amounts allowable as deductions under paragraphs (2) and (3) of section 804 shall be determined by reducing the tentative LICTI by the amount of the net capital gain (determined without regard to items attributable to noninsurance businesses).

(b) Life Insurance Company Taxable Income.—For purposes of this part, the term "life insurance company taxable income" means—

(1) life insurance gross income, reduced by

(2) life insurance gross deductions.

(c) Life Insurance Company Taxable Income Increased by Distribution From Pre-1984 Policyholders Surplus Account.—For provision increasing life insurance company taxable income for distributions to shareholders from pre-1984 policyholders surplus account, see section 815.

Subpart B—Life Insurance Gross Income

Sec. 803. Life insurance gross income.

SEC. 803. LIFE INSURANCE GROSS INCOME.

(a) In General.—For purposes of this part, the term "life insurance gross income" means the sum of the following amounts:

(1) Premiums.—

(A) The gross amount of premiums and other consideration on insurance and annuity contracts, less

(B) return premiums, and premiums and other consideration arising out of indemnity reinsurance.

(2) Decreases in certain reserves.—Each net decrease in reserves which is required by section 807(a) to be taken into account under this paragraph.

(3) Other amounts.—All amounts not includible under paragraph (1) or (2) which under this subtitle are includible in gross income.

(b) Special Rules for Premiums.—

(1) Certain items included.—For purposes of subsection (a)(1)(A), the term "gross amount of premiums and other consideration" includes—

(A) advance premiums,

(B) deposits,

(C) fees,

(D) assessments,

(E) consideration in respect of assuming liabilities under contracts not issued by the taxpayer, and

(F) the amount of policyholder dividends reimbursable to the taxpayer by a reinsurer in respect of reinsured policies.

on insurance and annuity contracts.

(2) Policyholder dividends excluded from return premiums.—For purposes of subsection (a)(1)(B)—

(A) In general.—Except as provided in subparagraph (B), the term "return premiums" does not include any policyholder dividends.

(B) Exception for indemnity reinsurance.—Subparagraph (A) shall not apply to amounts of premiums or other consideration returned to another life insurance company in respect of indemnity reinsurance.

Subpart C—Life Insurance Deductions

Sec. 804. Life insurance deductions.
Sec. 805. General deductions.
Sec. 806. Special deductions.
Sec. 807. Rules for certain reserves.
Sec. 808. Policyholder dividends deduction.
Sec. 809. Reduction in certain deductions of mutual life insurance companies.
Sec. 810. Operations loss deduction.

SEC. 804. LIFE INSURANCE DEDUCTIONS.

For purposes of this part, the term "life insurance deductions" means—

(1) the general deductions provided in section 805,

(2) the special life insurance company deduction determined under section 806(a), and

(3) the small life insurance company deduction (if any determined under section 806(b).

SEC. 805. GENERAL DEDUCTIONS.

(a) General Rule.—For purposes of this part, there shall be allowed the following deductions:

(1) Death benefits, etc.—All claims and benefits accrued, and all losses incurred (whether or not ascertained), during the taxable year on insurance and annuity contracts.

(2) Increases in certain reserves.—The net increase in reserves which is required by section 807(b) to be taken into account under this paragraph.

(3) Policyholder dividends. The deduction for policyholder dividends (determined under section 808(c)).

(4) Dividends received by company.—

(A) In general.—The deductions provided by sections 243, 244, and 245 (as modified by subparagraph (B))—

(i) for 100 percent dividends received, and

(ii) for dividends (other than 100 percent dividends) computed with respect to the life insurance company's share of the dividends (other than 100 percent dividends) received.

(B) Application of section 246(b).—In applying section 246(b) (relating to limitation on aggregate amount of deductions for dividends received) for purposes of subparagraph (A), the limit on the aggregate amount of the deductions allowed by sections 243(a)(1), 244(a), and 245 shall be 85 percent of the life insurance company taxable income, computed without regard to—

(i) the special life insurance company deduction and the small life insurance company deduction,

(ii) the operations loss deduction provided by section 810,

(iii) the deductions allowed by sections 243(a)(1), 244(a), and 245, and

(iv) any capital loss carryback to the taxable year under section 1212(a)(1), but such limit shall not apply for any taxable year for which there is a loss from operations.

(C) 100 PERCENT DIVIDEND.—For purposes of subparagraph (A), the term "100 percent dividend" means any dividend if the percentage used for purpose of determining the deduction allowable under section 243 or 244 is 100 percent. Such term does not include any dividend to the extent it is a distribution out of tax-exempt interest or out of dividends which are not 100 percent dividends (determined with the application of this sentence).

(5) OPERATIONS LOSS DEDUCTION.—The operations loss deduction (determined under section 810).

(6) ASSUMPTION BY ANOTHER PERSON OF LIABILITIES UNDER INSURANCE, ETC., CONTRACTS.—The consideration (other than consideration arising out of indemnity reinsurance) in respect of the assumption by another person of liabilities under insurance and annuity contracts.

(7) REIMBURSABLE DIVIDENDS.—The amount of policyholder dividends which—

(A) are paid or accrued by another insurance company in respect of policies the taxpayer has reinsured, and

(B) are reimbursable by the taxpayer under the terms of the reinsurance contract.

(8) OTHER DEDUCTIONS.—Subject to the modifications provided by subsection (b), all other deductions allowed under this subtitle for purposes of computing taxable income.

Except as provided in paragraph (3), no amount shall be allowed as a deduction under this part in respect of policyholder dividends.

(b) MODIFICATIONS.—The modifications referred to in subsection (a)(8) are as follows:

(1) INTEREST.—In applying section 163 (relating to deduction for interest), no deduction shall be allowed for interest in respect of items described in section 807(c).

(2) BAD DEBTS.—Section 166(c) (relating to reserve for bad debts) shall not apply.

(3) CHARITABLE, ETC., CONTRIBUTIONS AND GIFTS.—In applying section 170—

(A) the limit on the total deductions under such section provided by section 170(b)(2) shall be 10 percent of the life insurance company taxable income computed without regard to—

(i) the deduction provided by section 170,

(ii) the deductions provided by paragraphs (3) and (4) of subsection (a),

(iii) the special life insurance company deduction and the small life insurance company deduction,

(iv) any operations loss carryback to the taxable year under section 810, and

(v) any capital loss carryback to the taxable year under section 1212(a)(1), and

(B) under regulations prescribed by the Secretary, a rule similar to the rule contained in section 170(d)(2)(B) (relating to special rule for net operating loss carryovers) shall be applied.

(4) AMORTIZABLE BOND PREMIUM.—

(A) IN GENERAL.—Section 171 shall not apply.

(B) CROSS REFERENCE.—

For rules relating to amortizable bond premium, see section 811(b).

(5) NET OPERATING LOSS DEDUCTION.—Except as provided by section 844, the deduction for net operating losses provided in section 172 shall not be allowed.

(6) DIVIDENDS RECEIVED DEDUCTION.—Except as provided in subsection (a)(4), the deductions for dividends received provided by sections 243, 244, and 245 shall not be allowed.

SEC. 806. SPECIAL DEDUCTIONS.

(a) SPECIAL LIFE INSURANCE COMPANY DEDUCTION.—For purposes of section 804, the special life insurance company deduction for any taxable year is 25 percent of the excess of the tentative LICTI for such taxable year over the small life insurance company deduction (if any).

(b) SMALL LIFE INSURANCE COMPANY DEDUCTION.—

(1) IN GENERAL.—For purposes of section 804, the small life insurance company deduction for any taxable year is 60 percent of so much of the tentative LICTI for such taxable year as does not exceed $3,000,000.

(2) PHASEOUT BETWEEN $3,000,000 AND $15,000,000.—The amount of the small life insurance company deduction determined under paragrph (1) for any taxable year shall be reduced (but not below zero) by 15 percent of so much of the tentative LICTI for such taxable year as exceeds $3,000,000.

(3) SMALL LIFE INSURANCE COMPANY DEDUCTION NOT ALLOWABLE TO COMPANY WITH ASSETS OF $500,000,000 OR MORE.—

(A) IN GENERAL.—The small life insurance company deduction shall not be allowed for any taxable year to any life insurance company which, at the close of such taxable year, has assets equal to or greater than $500,000,000.

(B) ASSETS.—For purposes of this paragraph, the term "assets" means all assets of the company.

(C) VALUATION OF ASSETS.—For purposes of this paragraph, the amount attributable to—

(i) real property and stock shall be the fair market value thereof, and

(ii) any other asset shall be the adjusted basis of such asset for purposes of determining gain on sale or other disposition.

(D) SPECIAL RULE FOR INTERESTS IN PARTNERSHIPS AND TRUSTS.—For purposes of this paragraph—

(i) an interest in a partnership or trust shall not be treated as an asset of the company, but

(ii) the company shall be treated as actually owning its proportionate share of the assets held by the partnership or trust (as the case may be).

(c) Tentative LICTI.—For purposes of this section—

(1) In general.—The term "tentative LICTI" means life insurance company taxable income determined without regard to—

(A) the special life insurance company deduction, and

(B) the small life insurance company deduction.

(2) Exclusion of items attributable to noninsurance businesses.—The amount of the tentative LICTI for any taxable year shall be determined without regard to all items attributable to noninsurance businesses.

(3) Noninsurance business.—

(A) In general.—The term "insurance business" means any trade or business which is not an insurance business.

(B) Certain businesses treated as insurance businesses.—For purposes of subparagraph (A), any business which is not an insurance business but is of a type traditionally carried on by life insurance companies for investment purposes shall be treated as an insurance business.

(d) Special Rule for Controlled Groups.—

(1) Special life insurance company deduction and small life insurance company deduction determined on controlled group basis.—For purposes of subsections (a) and (b)—

(A) all life insurance companies which are members of the same controlled group shall be treated as 1 life insurance company, and

(B) any special life insurance company deduction and any small life insurance company deduction determined with respect to such group shall be allocated among the life insurance companies which are members of such group in proportion to their respective LICTI's.

(2) Nonlife insurance members included for asset test.—For purposes of subsection (b)(3), all members of the same controlled group (whether or not life insurance companies) shall be treated as 1 company.

(3) Controlled group.—For purposes of this subsection, the term "controlled group" means any controlled group of corporations (as defined in section 1563 (a)); except that subsections (a)(4) and (b)(2)(D) of section 1563 shall not apply.

SEC. 807. RULES FOR CERTAIN RESERVES.

(a) Decrease Treated as Gross Income.—If for any taxable year—

(1) the opening balance for the items described in subsection (c), exceeds

(2)((A) the closing balance for such items, reduced by

(B) the sum of (i) the amount of the policyholders' share of tax-exempt interest, plus (ii) any excess described in section 809(a)(2) for the taxable year.

such excess shall be included in gross income under section 803(a)(2).

(b) Increase Treated as Deduction.—If for any taxable year—

(1)(A) the closing balance for the items described in subsection (c), reduced by

(B) the sum of (i) the amount of the policyholders' share of tax-exempt interest, plus (ii) any excess described in section 809(a)(2) for the taxable year, exceeds

(2) the opening balance for such items,

such excess shall be taken into account as a deduction under section 805(a)(2).

(c) Items Taken Into Account.—The items referred to in subsections (a) and (b) are as follows:

(1) The life insurance reserves (as defined in section 816(b)).

(2) The unearned premiums and upaid losses included in total reserves under section 816(c)(2).

(3) The amounts (discounted at the appropriate rate of interest) necessary to satisfy the obligations under insurance and annuity contracts, but only if such obligations do not involve (at the time with respect to which the computation is made under this paragraph) life, accident, or health contingencies.

(4) Dividend accumulations, and other amounts, held at interest in connection with insurance and annuity contracts.

(5) Premiums received in advance, and liabilities for premium deposit funds.

(6) Reasonable special contingency reserves under contracts of group term life insurance or group accident and health insurance which are established and maintained for the provision of insurance on retired lives, for premium stabilization, or for a combination thereof.

For purposes of paragraph (3), the appropriate rate of interest for any obligation is the higher of the prevailing State assumed interest rate as of the time such obligation first did not involve life, accident, or health contingencies or the rate of interest assumed by the company (as of such time) in determining the guaranteed benefit.

(d) Method of Computing Reserves for Purposes of Determining Income.—

(1) In general.—For purposes of this part (other than section 816), the amount of the life insurance reserves for any contract shall be the greater of—

(A) the net surrender value of such contract, or

(B) the reserve determined under paragraph (2)

In no event shall the reserve determined under the preceding sentence for any contract as of any time exceed the amount which would be taken into account with respect to such contract as of such time in determining statutory reserves (as defined in section 809(b)(4)(B)).

(2) Amount of reserve.—The amount of the reserve determined under this paragraph with respect to any contract shall be determined by using—

(A) the tax reserve method applicable to such contract,

(B) The prevailing State assumed interest rate, and

(C) the prevailing commissioners' standard tables for mortality and morbidity adjusted as appropriate to reflect the risks (such as substandard risks) incurred under the contract which are not otherwise taken into account.

(3) Tax reserve method.—For purposes of this subsection—

(A) IN GENERAL.—The term "tax reserve method" means—

(i) LIFE INSURANCE CONTRACTS.—The CRVM in the case of a contract covered by the CRVM.

(ii) ANNUITY CONTRACTS.—The CARVM in the case of a contract covered by the CARVM.

(iii) NONCANCELLABLE ACCIDENT AND HEALTH INSURANCE CONTRACTS.—In the case of any noncancellable accident and health insurance contract, a 2-year full preliminary term method.

(iv) OTHER CONTRACTS.—In the case of any contract not described in clause (i), (ii), or (iii)—

(I) the reserve method prescribed by the National Association of Insurance Commissioners which covers such contract (as of the date of issuance), or

(II) if no reserve method has been prescribed by the National Association of Insurance Commissioners which covers such contract, a reserve method which is consistent with the reserve method required under clause (i), (ii), or (iii) or under subclause (I) of this clause (as of the date of the issuance of such contract) (whichever is most appropriate).

(B) DEFINITION OF CRVM AND CARVM.—For purposes of this paragraph—

(i) CRVM.—The term "CRVM" means the Commissioners' Reserve Valuation Method prescribed by the National Association of Insurance Commissioners which is in effect on the date of the issuance of the contract.

(ii) CARVM.—The term "CARVM" means the Commissioners' Annuities Reserve Valuation Method prescribed by the National Association of insurance Commissioners which is in effect on the date of the issuance of the contract.

(4) PREVAILING STATE ASSUMED INTEREST RATE.—For purposes of this subsection—

(A) IN GENERAL.—The term "prevailing State assumed interest rate" means, with respect to any contract, the highest assumed interest rate permitted to be used in computing life insurance reserves for insurance contracts or annuity contracts (as the case may be) under the insurance laws of at least 26 States.

For purposes of the preceding sentence, any limitation on interest rates imposed by the nonforfeiture laws of a State shall not be taken into account.

(B) WHEN RATE DETERMINED.—Except as provided in subparagraph (C), the prevailing State assumed rate with respect to any contract shall be determined as of the beginning of the calendar year in which the contract was issued.

(C) ELECTION FOR NONANNUITY CONTRACTS.—In the case of a contract other than an annuity contract, the issuer may elect (at such time and in such manner as the Secretary shall by regulations prescribe) to determine the prevail-

ing State assumed rate as of the beginning of the calendar year preceding the calendar year in which the contract was issued.

(5) PREVAILING COMMISSIONERS' STANDARD TABLES.—For purposes of this subsection—

(A) IN GENERAL.—The term "prevailing commissioners' standard tables" means, with respect to any contract, the most recent commissioners' standard tables prescribed by the National Association of Isurance Commissioners which are permitted to be used in computing reserves for that type of contract under the insurance laws of at least 26 States when the contract was issued.

(B) INSURER MAY USE OLD TABLES FOR 3 YEARS WHEN TABLES CHANGE.—If the prevailing commissioners' standard tables as of the beginning of any calendar year (hereinafter in this subparagraph referred to as the "year of change") is different from the prevailing commissioners' standard tables as of the beginning of the preceding calendar year, the issuer may use the prevailing commissioners' standard tables as of the beginning of the preceding calendar year with respect to any contract issued after the change and before the close of the 3-year period beginning on the first day of the year of change.

(C) SPECIAL RULE FOR CONTRACTS ISSUED BEFORE 1948.—If—

(i) a contract was issued before 1948, and

(ii) there were no commissioners' standard tables applicable to such contract when it was issued,

the mortality and morbidity tables used in computing statutory reserves for such contract shall be used for purposes of paragraph (2)(C).

(e) SPECIAL RULES FOR COMPUTING RESERVES.—

(1) NET SURRENDER VALUE.—For purposes of this section—

(A) IN GENERAL.—The net surrender value of any contract shall be determined—

(i) with regard to any penalty or charge which would be imposed on surrender, but

(ii) without regard to any maket value adjustment on surrender.

(B) SPECIAL RULE FOR PENSION PLAN CONTRACTS.—In the case of a pension plan contract, the balance in the policyholder's fund (determined without regard to any market value adjustment) shall be treated as the net surrender value of such contract.

(2) ISSUANCE DATE IN CASE OF GROUP CONTRACTS.—For purposes of this section, in the case of a group contract, the date on which such contract is issued shall be the date as of which the master plan is issued (or, with respect to a benefit guaranteed to a participant after such date, the date as of which such benefit is guaranteed).

(3) SUPPLEMENTAL BENEFITS.—

(A) QUALIFIED SUPPLEMENTAL BENEFITS TREATED SEPARATELY.—For purposes of this part, the amount of the life insurance reserve for any qualified supplemental benefit—

(i) shall be computed separately as though such benefit were under a separate contract, and

(ii) shall, except to the extent otherwise provided in regulations, be the reserve taken into account for purposes of the annual statement approved by the National Association of Insurance Commissioners.

(B) SUPPLEMENTAL BENEFITS WHICH ARE NOT QUALIFIED SUPPLEMENTAL BENEFITS.—In the case of any supplemental benefit described in subparagraph (D) which is not a qualified supplemental benefit, the amount of the reserve determined under paragraph (2) of subsection (d) shall, except to the extent otherwise provided in regulations, be the reserve taken into account for purposes of the annual statement approved by the National Association of Insurance Commissioners.

(C) QUALIFIED SUPPLEMENTAL BENEFIT.—For purposes of this paragraph, the term "qualified supplemental benefit" means any supplemental benefit described in subparagraph (D) if—

(i) there is a separately identified premium or charge for such benefit, and

(ii) any net surrender value under the contract attributable to any other benefit is not available to fund such benefit.

(D) SUPPLEMENTAL BENEFITS.—For purposes of this paragraph, the supplemental benefits described in this subparagraph are any—

(i) guaranteed insurability,
(ii) accidental death or disability benefit,
(iii) convertibility,
(iv) disability waiver benefit, or
(v) any other benefit prescribed by regulations,

which is supplemental to a contract for which there is a reserve described in subsection (c).

(4) CERTAIN CONTRACTS ISSUED BY FOREIGN BRANCHES OF DOMESTIC LIFE INSURANCE COMPANIES.—

(A) IN GENERAL.—In the case of any qualified foreign contract, the amount of the reserve shall be not less than the minimum reserve required by the laws, regulations, or administrative guidance of the regulatory authority of the foreign country referred to in subparagraph (B) (but not to exceed the net level reserves for such contract).

(B) QUALIFIED FOREIGN CONTRACT.—For purposes of subparagraph (A), the term "qualified foreign contract" means any contract issued by a foreign life insurance branch (which has its principal place of business in a foreign country) of a domestic life insurance company if—

(i) such contract is issued on the life or health of a resident of such country,

(ii) such domestic life insurance company was required by such foreign country (as of the time it began operations in such country) to operate in such country through a branch, and

(iii) such foreign country is not contiguous to the United States.

(5) Treatment of substandard risks.—

(A) Separate computation.—Except to the extent provided in regulations, the amount of the life insurance reserve for any qualified substandard risk shall be computed separately under subsection (d)(1) from any other reserve under the contract.

(B) Qualified substandard risk.—For purposes of subparagraph (A), the term "qualified substandard risk" means any substandard risk if—

(i) the insurance company maintains a separate reserve for such risk,

(ii) there is a separately identified premium charge for such risk,

(iii) the amount of the net surrender value under the contract is not increased or decreased by reason of such risk, and

(iv) the net surrender value under the contract may not be used to systematically pay premium charges for such risk.

(C) Limitation on amount of life insurance reserve.—The amount of the life insurance reserve determined for any qualified substandard risk shall in no event exceed the sum of the separately identified premiums charged for such risk less mortality charges for such risk.

(D) Limitation on amount of contracts to which paragraph applies.—The aggregate amount of insurance inforce under contracts to which this paragraph applies shall not exceed 10 percent of the insurance in force (other than term insurance) under life insurance contracts of the company.

(f) Adjustment for Change in Computing Reserves.—

(1) 10-year spread.—

(A) In general.—For purposes of this part, if the basis for determining any item referred to in subsection (c) as of the close of any taxable year differs from the basis for such determination as of the close of the preceding taxable year, then so much of the difference between—

(i) the amount of the item at the close of the taxable year, computed on the new basis, and

(ii) the amount of the item at the close of the taxable year, computed on the old basis,

as is attributable to contracts issued before the taxable year shall be taken into account under the method provided in subparagraph (B).

(B) Method.—The method provided in this subparagraph is as follows:

(i) if the amount determined under subparagraph (A)(i) exceeds the amount determined under subparagraph (A)(ii), $\frac{1}{10}$ of such excess shall be taken into account, for each of the succeeding 10 taxable years, as a deduction under section 805(a)(2); or

(ii) if the amount determined under subparagraph (A)(ii) exceeds the amount determined under subparagraph (A)(i), $\frac{1}{10}$ of such excess shall be included in gross income, for each of the 10 succeeding taxable years, under section 803(a)(2).

(2) TERMINATION AS LIFE INSURANCE COMPANY.—Except as provided in section 381(c)(22) (relating to carryovers in certain corporate readjustments), if for any taxable year the taxpayer is not a life insurance company, the balance of any adjustments under this subsection shall be taken into account for the preceding taxable year.

SEC. 808. POLICYHOLDER DIVIDENDS DEDUCTION.

(a) POLICYHOLDER DIVIDEND DEFINED.—For purposes of this part, the term "policyholder dividend" means any dividend or similar distribution to policyholders in their capacity as such.

(b) CERTAIN AMOUNTS INCLUDED.—For purposes of this part, the term "policyholder dividend" includes—

(1) any amount paid or credited (including as an increase in benefits) where the amount is not fixed in the contract but depends on the experience of the company or the discretion of the management,

(2) excess interest,

(3) premium adjustments, and

(4) experience-rated refunds.

(c) AMOUNT OF DEDUCTION.—

(1) IN GENERAL.—Except as limited by paragraph (2), the deduction for policyholder dividends for any taxable year shall be an amount equal to the policyholder dividends paid or accrued during the taxable year.

(2) REDUCTION IN CASE OF MUTUAL COMPANIES.—In the case of a mutual life insurance company, the deduction for policyholder dividends for any taxable year shall be reduced by the amount determined under section 809.

(d) DEFINITIONS.—For purposes of this section—

(1) EXCESS INTEREST.—The term "excess interest" means any amount in the nature of interest—

(A) paid or credited to a policyholder in his capacity as such, and

(B) determined at a rate in excess of the prevailing State assumed interest rate for such contract.

(2) PREMIUM ADJUSTMENT.—The term "premium adjustment" means any reduction in the premium under an insurance or annuity contract which (but for the reduction) would have been required to be paid under the contract.

(3) EXPERIENCE-RATED REFUND.—The term "experience-rated refund" means any refund or credit based on the experience of the contract or group involved.

(e) TREATMENT OF POLICYHOLDER DIVIDENDS.—For purposes of this part, any policyholder dividend which—

(1) increases the cash surrender value of the contract or other benefits payable under the contract, or

(2) reduces the premium otherwise required to be paid,

shall be treated as paid to the policyholder and returned by the policyholder to the company as a premium.

SEC. 809. REDUCTION IN CERTAIN DEDUCTIONS OF MUTUAL LIFE INSURANCE COMPANIES.

(a) GENERAL RULE.—

(1) POLICYHOLDER DIVIDENDS.—In the case of any mutual life insurance company, the amount of the deduction allowed under section 808 shall be reduced (but not below zero) by the differential earnings amount.

(2) REDUCTION IN RESERVE DEDUCTION IN CERTAIN CASES.—In the case of any mutual life insurance company, if the differential earnings amount exceeds the amount allowable as a deduction under section 808 for the taxable year (determined without regard to this section), such excess shall be taken into account under subsections (a) and (b) of section 807.

(3) DIFFERENTIAL EARNINGS AMOUNT.—For purposes of this section, the term "differential earnings amount" means, with respect to any taxable year, an amount equal to the product of—

(A) the life insurance company's average equity base for the taxable year, multiplied by

(B) the differential earnings rate for such taxable year.

(b) AVERAGE EQUITY BASE.—For purposes of this section—

(1) IN GENERAL.—The term "average equity base" means, with respect to any taxable year, the average of—

(A) the equity base determined as of the close of the taxable year, and

(B) the equity base determined as of the close of the preceding taxable year.

(2) EQUITY BASE.—The term "equity base" means an amount equal to—

(A) the surplus and capital,

(B) adjusted as provided in paragraphs (3), (4), (5), and (6) of this subsection.

(3) INCREASE FOR NONADMITTED FINANCIAL ASSETS.—

(A) IN GENERAL.—The amount of the surplus and capital shall be increased by the amount of the nonadmitted financial assets.

(B) NONADMITTED FINANCIAL ASSETS.—For purposes of subparagraph (A), the term "non-admitted financial asset" means any nonadmitted asset of the company which is—

(i) a bond,

(ii) stock,

(iii) real estate,

(iv) a mortgage loan on real estate, or

(v) any other invested asset.

(4) INCREASE WHERE STATUTORY RESERVES EXCEED TAX RESERVES.

(A) IN GENERAL.—If—

(i) the aggreate amount of statutory reserves, exceeds

(ii) the aggregate amount of tax reserves,

the amount of the surplus and capital shall be increased by the amount of such excess.

(B) DEFINITIONS.—For purposes of this paragraph—

(i) STATUTORY RESERVES.—The term "statutory reserves" means the aggregate amount set forth in the annual statement with respect to items described in section 807(c).

(ii) TAX RESERVES.—The term "tax reserves" means the aggregate of the items described in section 807(c) as determined for purposes of section 807.

(5) INCREASE BY AMOUNT OF CERTAIN OTHER RESERVES.—The amount of the surplus and capital shall be increased by the sum of—

(A) the amount of any mandatory securities valuation reserve,

(B) the amount of any deficiency reserve, and

(C) the amount of any voluntary reserve not described in subparagraph (A) or (B).

(6) ADJUSTMENT FOR NEXT YEAR'S POLICY-HOLDER DIVIDENDS.—The amount of the surplus and capital shall be increased by 50 percent of the amount of any provision for policyholder dividends (or other liability) payable in the following taxable year.

(c) DIFFERENTIAL EARNINGS RATE.—For purposes of this section, the differential earnings rate for any taxable year is the excess of—

(1) the imputed earnings rate for the taxable year, over

(2) the average mutual earnings rate for the second calendar year preceding the calendar year in which the taxable year begins.

(d) IMPUTED EARNINGS RATE—

(1) IN GENERAL.—For purposes of this section, the imputed earnings rate for any taxable year is—

(A) 16.5 percent in the case of taxable years beginning in 1984, and

(B) in the case of taxable years beginning after 1984, an amount which bears the same ratio to 16.5 percent as the current stock earnings rate for the taxable year bears to the base period stock earnings rate.

(2) CURRENT STOCK EARNINGS RATE.—For purposes of this subsection, the term "current stock earnings rate" means, with respect to any taxable year, the average of the stock earnings rates determined under paragraph (4) for the 3 calendar years preceding the calendar year in which the taxable year begins.

(3) BASE PERIOD STOCK EARNINGS RATE.—For purposes of this subsection, the base period stock earnings rate is the average of the stock earnings rates determined under paragraph (4) for calendar years 1981, 1982, and 1983.

(4) STOCK EARNINGS RATE.—

(A) IN GENERAL.—For purposes of this subsection, the stock earnings rate for any calendar year is the numerical average of the earnings rates of the 50 largest stock companies.

(B) EARNINGS RATE.—For purposes of subparagraph (A), the earnings rate of any stock company is the percentage (determined by the Secretary) which—

(i) the statement gain or loss from operations for the calendar year of such company, is of

(ii) such company's average equity base for such year.

(C) 50 LARGEST STOCK COMPANIES.—For purposes of this paragraph, the term "50 largest stock companies" means a group (as determined by the Secretary) of stock life insurance companies which consists of the 50 largest stock life insurance companies which are subject to tax under this chapter.

(D) TREATMENT OF AFFILIATED GROUPS.—For purposes of this paragraph, all stock life insurance companies which are members of the same affiliated group shall be treated as one stock life insurance company.

(e) AVERAGE MUTUAL EARNINGS RATE.—For purposes of this section, the average mutual earnings rate for any calendar year is the percentage (determined by the Secretary) which—

(1) the aggregate statement gain or loss from operations for such year of mutual life insurance companies, is of

(2) their aggregate average equity bases for such year.

(f) RECOMPUTATION IN SUBSEQUENT YEAR.—

(1) INCLUSION IN INCOME WHERE RECOMPUTED AMOUNT GREATER.—In the case of any mutual life insurance company, if—

(A) the recomputed differential earnings amount for any taxable year, exceeds

(B) the differential earnings amount determined under this section for such taxable year,

such excess shall be included in life insurance gross income for the succeeding taxable year.

(2) DEDUCTION WHERE RECOMPUTED AMOUNT SMALLER.—In the case of any mutual life insurance company, if—

(A) the differential earnings amount determined under this section for any taxable year, exceeds

(B) the recomputed differential earnings amount for such taxable year,

such excess shall be allowed as a life insurance deduction for the succeeding taxable year.

(3) RECOMPUTED DIFFERENTIAL EARNINGS AMOUNT.—For purposes of this subsection, the term "recomputed differential earnings amount" means, with respect to any taxable year, the amount which would be the differential earnings amount for such taxable year if the average mutual earnings rate taken into account under subsection (c)(2) were the average mutual earnings rate for the calendar year in which the taxable year begins.

(4) SPECIAL RULE WHERE COMPANY CEASES TO BE MUTUAL LIFE INSURANCE COMPANY.—Except as provided in section 381(c)(22), if—

(A) a life insurance company is a mutual life insurance company for any taxable year, but

(B) such life insurance company is not a mutual life insurance company for the succeeding taxable year,

any adjustment under paragraph (1) or (2) by reason of the recomputed differential earnings amount for the first of such taxable years shall be taken into account for the first of such taxable years.

(g) DEFINITIONS AND SPECIAL RULES.—*For purposes of this section—*

(1) STATEMENT GAIN OR LOSS FROM OPERATIONS.—*The term "statement gain or loss from operations" means the net gain or loss from operations required to be set forth in the annual statement—*

(A) determined with regard to policyholder dividends (as defined in section 808) but without regard to Federal income taxes,

(B) determined on the basis of the tax reserves rather than statutory reserves, and

(C) properly adjusted for capital gains and losses and other relevant items.

(2) OTHER TERMS.—*Except as otherwise provided in this section, the terms used in this section shall have the same respective meanings as when used in the annual statement.*

(3) DETERMINATIONS BASED ON AMOUNT SET FORTH IN ANNUAL STATEMENT.—*Except as otherwise provided in this section or in regulations, all determinations under this section shall be made on the basis of the amounts required to be set forth in the annual statement.*

(4) ANNUAL STATEMENT.—*The term "annual statement" means the annual statement for life insurance companies approved by the National Association of Insurance Commissioners.*

(5) REDUCTION IN EQUITY BASE FOR PORTION OF EQUITY ALLOCABLE TO LIFT INSURANCE BUSINESS IN NONCONTIGUOUS WESTERN HEMISPHERE COUNTRIES.—*The equity base of any mutual life insurance company shall be reduced by an amount equal to the portion of the equity base attributable to the life insurance business multiplied by a fraction—*

(A) the numerator of which is the portion of the tax reserves which are allocable to life insurance contracts issued on the life of residents of countries in the Western Hemisphere which are not contiguous to the United States, and

(B) the denominator of which is the amount of the tax reserves allocable to life insurance contracts.

The preceding sentence shall not apply unless the fraction determined under the preceding sentence exceeeds $\frac{1}{20}$.

(h) TREATMENT OF STOCK COMPANIES OWNED BY MUTUAL LIFE INSURANCE COMPANIES.—

(1) TREATMENT AS MUTUAL LIFE INSURANCE COMPANIES FOR PURPOSES OF DETERMINING STOCK EARNINGS RATES AND MUTUAL EARNINGS RATES.—*Solely for purposes of subsections (d) and (e), a stock life insurance company shall be treated as a mutual life insurance company if stock possessing—*

(A) at least 80 percent of the total combined voting power of all classes of stock of such stock life insurance company entitled to vote, or

(B) at least 80 percent of the total value of shares of all classes of stock of such stock life insurance company,

is owned at any time during the calendar year directly (or through the application of section 318) by 1 or more mutual life insurance companies.

(2) TREATMENT OF AFFILIATED GROUP WHICH INCLUDES MUTUAL PARENT AND STOCK SUBSIDIARY.—In the case of an affiliated group of corporations which includes a common parent which is a mutual life insurance company and one or more stock life insurance companies, for purposes of determining the average equity base of such common parent (and the statement gain or loss from operations)—

(A) stock in such life insurance companies held by such common parent (and dividends on such stock) shall not be taken into account, and

(B) such common parent and such stock life insurance companies shall be treated as though they were one mutual life insurance company.

(3) ADJUSTMENT WHERE STOCK COMPANY NOT MEMBER OF AFFILIATED GROUP.—In the case of any stock life insurance company which is described in paragraph (1) but is not a member of an affiliated group described in paragraph (2), under regulations, proper adjustment shall be made in the average equity bases (and statement gains or losses from operations) of mutual life insurance companies owning stock in such company as may be necessary or appropriate to carry out the purposes of this section.

SEC. 810. OPERATIONS LOSS DEDUCTION.

(a) DEDUCTION ALLOWED.—There shall be allowed as a deduction for the taxable year an amount equal to the aggregate of—

(1) the operations loss carryovers to such year, plus

(2) the operations loss carrybacks to such year.

For purposes of this part, the term "operations loss deduction" means the deduction allowed by this subsection.

(b) OPERATIONS LOSS CARRYBACKS AND CARRYOVERS.—

(1) YEARS TO WHICH LOSS MAY BE CARRIED.—The loss from operations for any taxable year (hereinafter in this section referred to as the "loss year") shall be—

(A) an operations loss carryback to each of the 3 taxable years preceding the loss year,

(B) an operations loss carryover to each of the 15 taxable years following the loss year, and

(C) if the life insurance company is a new company for the loss year, an operations loss carryover to each of the 3 taxable years following the 15 taxable years described in subparagraph (B).

(2) AMOUNT OF CARRYBACKS AND CARRYOVERS.—The entire amount of the loss from operations for any loss year shall be carried to the earliest of the taxable years to which (by reason of paragraph (1)) such loss may be carried. The portion of such loss which shall be carried to each of the other taxable years shall be the excess (if any) of the amount of such loss over the sum of the offsets (as defined in subsection (d)) for each of the prior taxable years to which such loss may be carried.

(3) ELECTION FOR OPERATIONS LOSS CARRYBACKS.—In the case of a loss from operations for any taxable year, the taxpayer may elect to relinquish the entire carryback period for such loss. Such election shall be made by the due date (including exten-

sions of time) for filing the return for the taxable year of the loss from operations for which the election is to be in effect, and once made for any taxable year, such election shall be irrevocable for that taxable year.

(c) COMPUTATION OF LOSS FROM OPERATIONS.—For purposes of this section—

(1) GENERAL.—The term "loss from operations" means the excess of the life insurance deductions for any taxable year over the life insurance gross income for such taxable year.

(2) MODIFICATIONS.—For purposes of paragraph (1)—

(A) the operations loss deduction shall not be allowed, and

(B) the deductions allowed by sections 243 (relating to dividends received by corporations), 244 (relating to dividends received on certain preferred stock of public utilities), and 245 (relating to dividends received from certain foreign corporations) shall be computed without regard to section 246(b) as modified by section 805(a)(4).

(d) OFFSET DEFINED.—

(1) IN GENERAL.—For purposes of subsection (b)(2), the term "offset" means, with respect to any taxable year, an amount equal to that increase in the operations loss deduction for the taxable year which reduces the life insurance company taxable income (computed without regard to paragraphs (2) and (3) of section 804) for such year to zero.

(2) OPERATIONS LOSS DEDUCTION.—For purposes of paragraph (1), the operations loss deduction for any taxable year shall be computed without regard to the loss from operations for the loss year or for any taxable year thereafter.

(e) NEW COMPANY DEFINED.—For purposes of this part, a life insurance company is a new company for any taxable year only if such taxable year begins not more than 5 years after the first day on which it (or any predecessor, if section 381(c)(22) applies) was authorized to do business as an insurance company.

(f) APPLICATION OF SUBTITLES A AND F IN RESPECT OF OPERATION LOSSES.—Except as provided in section 805(b)(5), subtitles A and F shall apply in respect of operation loss carrybacks, operation loss carryovers, and the operations loss deduction under this part, in the same manner and to the same extent as such subtitles apply in respect of net operating loss carrybacks, net operating loss carryovers, and the net operating loss deduction.

(g) TRANSITIONAL RULE.—For purposes of this section and section 812 (as in effect before the enactment of the Life Insurance Tax Act of 1983), this section shall be treated as a continuation of such section 812.

Subpart D—Accounting, Allocation, and Foreign Provisions

Sec. 811. Accounting provisions.
Sec. 812. Definition of company's share and policyholders' share.
Sec. 813. Foreign life insurance companies.
Sec. 814. Contiguous country branches of domestic life insurance companies.
Sec. 815. Distributions to shareholders from pre-1984 policyholders surplus account.

SEC. 811. ACCOUNTING PROVISIONS.

(a) METHOD OF ACCOUNTING.—All computations entering into the determination of the taxes imposed by this part shall be made—

(1) under an accrual method of accounting, or

(2) to the extent permitted under regulations prescribed by the Secretary, under a combination of an accrual method of accounting with any other method permitted by this chapter (other than the cash receipts and disbursements method).

To the extent not inconsistent with the preceding sentence or any other provision of this part, all such computations shall be made in a manner consistent with the manner required for purposes of the annual statement approved by the National Association of Insurance Commissioners.

(b) AMORTIZATION OF PREMIUM AND ACCRUAL OF DISCOUNT.—

(1) IN GENERAL.—The appropriate items of income, deductions, and adjustments under this part shall be adjusted to reflect the appropriate amortization of premium and the appropriate accrual of discount attributable to the taxable year on bonds, notes, debentures, or other evidences of indebtedness held by a life insurance company. Such amortization and accrual shall be determined—

(A) in accordance with the method regularly employed by such company, if such method is reasonable, and

(B) in all other cases, in accordance with regulations prescribed by the Secretary.

(2) SPECIAL RULES.—

(A) AMORTIZATION OF BOND PREMIUM.—In the case of any bond (as defined in section 171(d)), the amount of bond premium, and the amortizable bond premium for the taxable year, shall be determined under section 171(b) as if the election set forth in section 171(c) had been made.

(B) CONVERTIBLE EVIDENCE OF INDEBTEDNESS.—In no case shall the amount of premium on a convertible evidence of indebtedness include any amount attributable to the conversion features of the evidence of indebtedness.

(3) EXCEPTION.—No accrual of discount shall be required under paragraph (1) on any bond (as defined in section 171(d)), except in the case of discount which is—

(A) interest to which section 103 applies, or

(B) original issue discount (as defined in section 1232(b)).

(c) NO DOUBLE COUNTING.—Nothing in this part shall permit—

(1) a reserve to be established for any item unless the gross amount of premiums and other consideration attributable to such item are required to be included in life insurance gross income,

(2) the same item to be counted more than once for reserve purposes, or

(3) any item to be deducted (either directly or as an increase in reserves) more than once.

(d) ALLOCATION IN CASE OF REINSURANCE AGREEMENT INVOLVING TAX AVOIDANCE OR EVASION.—In the case of 2 or more related persons (within the meaning of section 482) who are parties to a reinsurance agreement (or where one of the parties to a reinsurance

agreement is, with respect to any contract covered by the agreement, in effect an agent of, or conduit for, another party to such agreement), the Secretary may—

(1) allocate between or among such persons income (whether investment income, premium, or otherwise), deductions, assets, reserves, credits, and other items related to such agreement, or

(2) recharacterize any such items,

if he determines that such allocation or recharacterization is necessary to reflect the proper source and character of the taxable income (or any item described in paragraph (1) relating to such taxable income) of each such person.

(e) METHOD OF COMPUTING RESERVES ON CONTRACT WHERE INTEREST IS GUARANTEED BEYOND END OF TAXABLE YEAR.—For purposes of this part (other than section 816), amounts in the nature of interest to be paid or credited under any contract for any period which is computed at a rate which—

(1) exceeds the prevailing State assumed interest rate for the contract for such period, and

(2) is guaranteed beyond the end of the taxable year on which the reserves are being computed,

shall be taken into account in computing the reserves with respect to such contract as if such interest were guaranteed only up to the end of the taxable year.

(f) SHORT TAXABLE YEARS.—If any return of a corporation made under this part is for a period of less than the entire calendar year (referred to in this subsection as "short period"), then section 443 shall not apply in respect to such period, but life insurance company taxable income shall be determined, under regulations prescribed by the Secretary, on an annual basis by a ratable daily projection of the appropriate figures for the short period.

SEC. 812. DEFINITION OF COMPANY'S SHARE AND POLICYHOLDERS' SHARE.

(a) GENERAL RULE.—

(1) COMPANY'S SHARE.—For purposes of section 805(a)(4), the term "company's share" means, with respect to any taxable year, the percentage obtained by dividing—

(A) the company's share of the net investment income for the taxable year, by

(B) the net investment income for the taxable year.

(2) POLICYHOLDERS' SHARE.—For purposes of section 807, the term "policyholders' share" means, with respect to any taxable year, the excess of 100 percent over the percentage determined under paragraph (1).

(b) COMPANY'S SHARE OF NET INVESTMENT INCOME.—For purposes of this section, the company's share of net investment income is the excess (if any) of—

(1) the net investment income for the taxable year, over

(2) the sum of—

(A) the deduction for policyholders' dividends determined under sections 808 and 809 for the taxable year, and

(B) all amounts in the nature of interest paid or credited to customers pursuant to insurance or annuity contracts.

For purposes of paragraph (2)(B), the term "insurance of annuity contract" shall include any pension plan contract.

(c) Net Investment Income.—For purposes of this section, the term "net investment income" means the excess of—

(1) gross investment income, over

(2) investment expenses.

(d) Gross Investment Income.—For purposes of this section, the term "gross investment income" means the sum of the following:

(1) Interest, etc.—The gross amount of income from—

(A) interest (including tax-exempt interest), dividends, rents, and royalties,

(B) the entering into of any lease, mortgage, or other instrument or agreement from which the life insurance company derives interest, rents, or royalties, and

(C) the alteration or termination of any instrument or agreement described in subparagraph (B).

(2) Short-term capital gain.—The amount (if any) by which the net short-term capital gain exceeds the net long-term capital loss.

(3) Trade or business income.—The gross income from any trade or business (other than an insurance business) carried on by the life insurance company, or by a partnership of which the life insurance company is a partner. In computing gross income under this paragraph, there shall be excluded any item described in paragraph (1).

Except as provided in paragraph (2), in computing gross investment income under this subsection, there shall be excluded any gain from the sale or exchange of a capital asset, and any gain considered as gain from the sale or exchange of a capital asset.

(e) Investment Expenses.—For purposes of this section, the term "investment expenses" means the sum of—

(1) the deductions allowable which are directly connected with the production of investment income (other than the deductions under sections 243, 244, and 245), and

(2) an amount equal to the general expenses of the life insurance company for the taxable year multiplied by a fraction—

(A) the numerator of which is the gross investment income for the taxable year, and

(B) the denominator of which is the gross receipts of the life insurance company for the taxable year.

(f) Dividends From Certain Subsidiaries Not Included in Gross Investment Income.—For purposes of this section, the term "gross investment income" shall not include any dividend received by the life insurance company which is a 100-percent dividend (as defined in section 805(a)(4)(C).

(g) No Double Counting.—Under regulations, proper adjustment shall be made in the application of this section to prevent an item from being counted more than once.

SEC. 813. FOREIGN LIFE INSURANCE COMPANIES.

(a) Adjustment Where Surplus Held in the United States Is Less Than Specified Minimum.—

(1) In general.—In the case of any foreign company taxable under this part, if—

(A) the required surplus determined under paragraph (2), exceeds

(B) the surplus held in the United States,

then its tentative LICTI effectively connected with the conduct of an insurance business within the United States shall be increased by an amount determinded by multiplying such excess by such company's current investment yield.

(2) REQUIRED SURPLUS.—For purposes of this subsection—

(A) IN GENERAL.—The term "required surplus" means the amount determined by multiplying the taxpayer's total insurance liabilities on United States business by a percentage for the taxable year determined and proclaimed by the Secretary under subparagraph (B).

(B) DETERMINATION OF PERCENTAGE.—The percentage determined and proclaimed by the Secretary under this subparagraph shall be based on such data with respect to domestic life insurance companies for the preceding taxable year as the Secretary considers representative. Such percentage shall be computed on the basis of a ratio the numerator of which is the excess of the assets over the total insurance liabilities, and the demominator of which is the total insurance liabilities.

(3) CURRENT INVESTMENT YIELD.—For purposes of this subsection—

(A) IN GENERAL.—The term "current investment yield" means the percent obtained by dividing—

(i) the net investment income on assets held in the United States, by

(ii) the mean of the assets held in the United States during the taxable year.

(B) DETERMINATIONS BASED ON AMOUNT SET FORTH IN THE ANNUAL STATEMENT.—Except as otherwise provided in regulations, determinations under subparagraph (A) shall be made on the basis of the amounts required to be set forth on the annual statement approved by the National Association of Insurance Commissioners.

(4) OTHER DEFINITIONS.—For purposes of this subsection—

(A) SURPLUS HELD IN THE UNITED STATES.—The surplus held in the United States is the excess of the assets (determined under section 806(b)(3)(c)) held in the United States over the total insurance liabilities on United States business.

(B) TOTAL INSURANCE LIABILITIES.—For purposes of this subsection, the term "total insurance liabilities" means the sum of the total reserves (as defined in section 816(c)) plus (to the extent not included in total reserves) the items referred to in paragraphs (3), (4), (5), and (6) of section 807(c).

(5) REDUCTION OF SECTION 881 TAXES.—In the case of any foreign company taxable under this part, there shall be determined—

(A) the amount which would be subject to taxes under section 881 if the amount taxable under such section were determined without regard to sections 103 and 894, and

(B) the amount of the increase provided by paragraph (1).

The tax under section 881 (determined without regard to this paragraph) shall be reduced (but not below zero) by an amount which is the same proportion of such tax as the amount referred to in subparagraph (B) is of the amount referred to in subparagraph (A); but such reduction in taxes shall not exceed the increase in taxes under this part by reason of the increase provided by paragraph (1).

(b) Adjustment to Limitation on Deduction for Policyholder Dividends in the Case of Foreign Mutual Life Insurance Companies.—For purposes of section 809, the equity base of any foreign mutual life insurance company as of the close of any taxable year shall be increased by the amount of any excess determined under paragraph (1) of subsection (a) with respect to such taxable year.

(c) Cross Reference.—

For taxation of foreign corporations carrying on life insurance business within the United States, see section 842.

SEC. 814. CONTIGUOUS COUNTRY BRANCHES OF DOMESTIC LIFE INSURANCE COMPANIES.

(a) Exclusion of Items.—In the case of a domestic mutual insurance company which—

(1) is a life insurance company,

(2) has a contiguous country life insurance branch, and

(3) makes the election provided by subsection (g) with respect to such branch,

there shall be excluded from each item involved in the determination of life insurance company taxable income the items separately accounted for in accordance with subsection (c).

(b) Contiguous Country Life Insurance Branch.—For purposes of this section, the term contiguous country life insurance branch means a branch which—

(1) issues insurance contracts insuring risks in connection with the lives or health of residents of a country which is contiguous to the United States,

(2) has its principal place of business in such contiguous country, and

(3) would constitute a mutual life insurance company if such branch were a separate domestic insurance company.

For purposes of this section, the term "insurance contract" means any life, health, accident, or annuity contract or reinsurance contract or any contract relating thereto.

(c) Separate Accounting Required.—Any taxpayer which makes the election provided by subsection (g) shall establish and maintain a separate account for the various income, exclusion, deduction, asset, reserve, liability, and surplus items properly attributable to the contracts described in subsection (b). Such separate accounting shall be made—

(1) in accordance with the method regularly employed by such company, if such method clearly reflects income derived from, and the other items attributable to, the contracts described in subsection (b), and

(2) in all other cases, in accordance with regulations prescribed by the Secretary.

(d) Recognition of Gain on Assets in Branch Account.—If the aggregate fair market value of all the invested assets and tangible property which are separately accounted for by the domestic life insurance company in the branch account established pursuant to subsection (c) exceeds the aggregate adjusted basis of such assets for purposes of determining gain, then the domestic life insurance company shall be treated as having sold all such assets on the first day of the first taxable year for which the election is in effect at their fair market value on such first day. Notwithstanding any other provision of this chapter, the net gain shall be recognized to the domestic life insurance company on the deemed sale described in the preceding sentence.

(e) Transactions Between Contiguous Country Branch and Domestic Life Insurance Company.—

(1) Reimbursement for home office services, etc.—Any payment, transfer, reimbursement, credit, or allowance which is made from a separate account established pursuant to subsection (c) to one or more other accounts of a domestic life insurance company as reimbursement for costs incurred for or with respect to the insurance (or reinsurance) of risks accounted for in such separate account shall be taken into account by the domestic life insurance company in the same manner as if such payment, transfer, reimbursement, credit, or allowance had been received from a separate person.

(2) Repatriation of income.—

(A) In general.—Except as provided in subparagraph (B), any amount directly or indirectly transferred or credited from a branch account established pursuant to subsection (c) to one or more other accounts of such company shall, unless such transfer or credit is a reimbursement to which paragraph (1) applies, be added to the tentative LICTI of the domestic life insurance company.

(B) Limitation.—The addition provided by subparagraph (A) for the taxable year with respect to any contigous country life insurance branch shall not exceed the amount by which—

(i) the aggregate decrease in the tentative LICTI of the domestic life insurance company for the taxable year and for all prior taxable years resulting solely from the application of subsection (a) of this section with respect to such branch, exceeds

(ii) the amount of additions to tentative LICTI pursuant to subparagraph (A) with respect to such contiguous country branch for all prior taxable years.

(C) Transitional rule.—For purposes of this paragraph, in the case of a prior taxable year beginning before January 1, 1984, the term "tentative LICTI" means life insurance company taxable income determined under this part (as in effect for such year) without regard to this paragraph.

(f) Other Rules.—

(1) Treatment of foreign taxes.—

(A) In general.—No income, war profits, or excess profits taxes paid or accrued to any foreign country or possession of the United States which is attributable to income

excluded under subsection (a) shall be taken into account for purposes of subpart A of part III of subchapter N (relating to foreign tax credit) or allowable as a deduction.

(B) TREATMENT OF REPATRIATED AMOUNTS.—For purposes of sections 78 and 902, where any amount is added to the life insurance company taxable income of the domestic life insurance company by reason of subsection (e)(2), the contiguous country life insurance branch shall be treated as a foreign corporation. Any amount so added shall be treated as a dividend paid by a foreign corporation, and the taxes paid to any foreign country or possession of the United States with respect to such amount shall be deemed to have been paid by such branch.

(2) UNITED STATES SOURCE INCOME ALLOCABLE TO CONTIGUOUS COUNTRY BRANCH.—For purposes of sections 881, 882, and 1442, each contiguous country life insurance branch shall be treated as a foreign corporation. Such sections shall be applied to each such branch in the same manner as if such sections contained the provisions of any treaty to which the United States and the contiguous country are parties, to the same extent such provisions would apply if such branch were incorporated in such contiguous country.

(g) ELECTION.—A taxpayer may make the election provided by this subsection with respect to any contiguous country for any taxable year. An election made under this subsection for any taxable year shall remain in effect for all subsequent taxable years, except that it may be revoked with the consent of the Secretary. The election provided by this subsection shall be made not later than the time prescribed by law for filing the return for the taxable year (including extensions thereof) with respect to which such election is made, and such election and any approved revocation thereof shall be made in the manner provided by the Secretary.

(h) SPECIAL RULE FOR DOMESTIC STOCK LIFE INSURANCE COMPANIES.—At the election of a domestic stock life insurance company which has a contiguous country life insurance branch described in subsection (b) (without regard to the mutual requirement in subsection (b)(3)), the assets of such branch may be transferred to a foreign corporation organized under the laws of the contiguous country without the application of section 367 or 1491. Subsection (a) shall apply to the stock of such foreign corporation as if such domestic company were a mutual company and as if the stock were an item described in subsection (c). Subsection (e)(2) shall apply to amounts transferred or credited to such domestic company as if such domestic company and such foreign corporation constituted one domestic mutual life insurance company. The insurance contracts which may be transferred pursuant to this subsection shall include only those which are similar to the types of insurance contracts issued by a mutual life insurance company. Notwithstanding the first sentence of this subsection, if the aggregate fair market value of the invested assets and tangible property which are separately accounted for by the domestic life insurance company in the branch account exceeds the aggregate adjusted basis of such assests for purposes of determining gain, the domestic life insurance company shall be deemed to have sold all such assets on the first day of the taxable year for

which the election under this subsection applies and the net gain shall be recognized to the domestic life insurance company on the deemed sale, but not in excess of the proportion of such net gain which equals the proportion which the aggregate fair market value of such assets which are transferred pursuant to this subsection is of the aggregate fair market value of all such assets.

SEC. 815. DISTRIBUTIONS TO SHAREHOLDERS FROM PRE-1984 POLICYHOLDERS SURPLUS ACCOUNT.

(a) General Rule.—The life insurance company taxable income (within the meaning of section 801(b)) for any taxable year of any stock life insurance company which has an existing policyholders surplus account shall be increased by any direct or indirect distribution to shareholders from such account. For purposes of the preceding sentence, the life insurance company taxable income (within the meaning of section 801(b)) shall be treated as not less than zero.

(b) Ordering Rule.—For purposes of this section, any distribution to shareholders shall be treated as made—

(1) first out of the shareholders surplus account, to the extent therof,

(2) then out of the policyholders surplus account, to the extent thereof, and

(3) finally, out of other accounts.

(c) Shareholders Surplus Account.—

(1) In general.—Each stock life insurance company which has an existing policyholders surplus account shall continue its shareholders surplus account for purposes of this part.

(2) Additions to account.—The amount added to the shareholders surplus account for any taxable year beginning after December 31, 1983, shall be the excess of—

(A) the sum of—

(i) the life insurance company's taxable income (determined without regard to this section),

(ii) the special deductions provided by section 806, and

(iii) the deductions for dividends received provided by sections 243, 244, and 245 (as modified by section 805(a)(4) and the amount of interest excluded from gross income under section 103, over

(B) the taxes imposed for the taxable year by section 801 (determined without regard to this section).

(3) Subtractions from account.—There shall be subtracted from the shareholders surplus account for any taxable year the amount which is treated under this section as distributed out of such account.

(d) Policyholders Surplus Account.—

(1) In general.—Each stock life insurance company which has an existing policyholders surplus account shall continue such account.

(2) No additions to account.—No amount shall be added to the policyholders surplus account for any taxable year beginning after December 31, 1983.

(3) SUBTRACTIONS FROM ACCOUNT.—There shall be subtracted from the policyholders surplus account for any taxable year an amount equal to the sum of—

(A) the amount which (without regard to subparagraph (B)) is treated under this section as distributed out of the policyholders surplus account, and

(B) the amount by which the tax imposed for the taxable year by section 801 is increased by reason of this section.

(e) EXISTING POLICYHOLDERS SURPLUS ACCOUNT.—For purposes of this section, the term "existing policyholders surplus account" means any policyholders surplus account which has a balance as of the close of December 31, 1983.

(f) OTHER RULES APPLICABLE TO POLICYHOLDERS SURPLUS ACCOUNT CONTINUED.—Except to the extent inconsistent with the provisions of this part, the provisions of subsections (d), (e), (f), and (g) of section 815 as in effect before the enactment of the Life Insurance Tax Act of 1983 are hereby made applicable in respect of any policyholders surplus account for which there was a balance as of December 31, 1983.

Subpart E—Definitions and Special Rules

Sec. 816. Life insurance company defined.
Sec. 817. Treatment of variable contracts.
Sec. 818. Other definitions and special rules.

SEC. 816. LIFE INSURANCE COMPANY DEFINED.

(a) LIFE INSURANCE COMPANY DEFINED.—For purposes of this subtitle, the term "life insurance company" means an insurance company which is engaged in the business of issuing life insurance and annuity contracts (either separately or combined with accident and health insurance), or noncancellable contracts of health and accident insurance, if—

(1) its life insurance reserves (as defined in subsection (b)), plus

(2) unearned premiums, and unpaid losses (whether or not ascertained), on noncancellable life, accident, or health policies not included in life insurance reserves, comprise more than 50 percent of its total reserves (as defined in subsection (c)). For purposes of the preceding sentence, the term "insurance company" means any company more than half of the business of which during the taxable year is the issuing of insurance or annuity contracts or the reinsuring of risks underwritten by insurance companies.

(b) LIFE INSURANCE RESERVES DEFINED.—

(1) IN GENERAL.—For purposes of this part, the term "life insurance reserves" means amounts—

(A) which are computed or estimated on the basis of recognized mortality or morbidity tables and assumed rates of interest, and

(B) which are set aside to mature or liquidate, either by payment or reinsurnance, future unaccrued claims arising from life insurance, annuity, and noncancellable accident and health insurance contracts (including life insurance or annuity contracts combined with noncancellable accident

and health insurance) involving, at the time with respect to which the reserve is computed, life, accident, or health contingencies.

(2) Reserves must be required by law.—Except—

(A) in the case of policies covering life, accident, and health insurance combined in one policy issued on the weekly premium payment plan, continuing for life and not subject to cancellation, and

(B) as provided in paragraph (3),

in addition to the requirements set forth in paragraph (1), life insurance reserves must be required by law.

(3) Assessment companies.—In the case of an assessment life insurance company or association the term "life insurance reserves" includes—

(A) sums actually deposited by such company or association with State officers pursuant to law as guaranty or reserve funds, and

(B) any funds maintained, under the charter or articles of incorporation or association (or bylaws approved by a State insurance commissioner) of such company or association, exclusively for the payment of claims arising under certificates of membership or policies issued on the assessment plan and not subject to any other use.

(4) Deficiency reserves excluded.—

(A) In general.—The term "life insurance reserves" does not include deficiency reserves.

(B) Deficiency reserve defined.—For purposes of this subsection and subsection (c), the deficiency reserve for any contract is that portion of the reserve for such contract equal to the amount (if any) by which—

(i) the present value of the future net premiums required for such contract, exceeds

(ii) the present value of the future actual premiums and consideration charged for such contract.

(5) Amount of reserves.—For purposes of this subsection, subsection (a), and subsection (c), the amount of any reserve (or portion thereof) for any taxable year shall be the mean of such reserve (or portion thereof) at the beginning and end of the taxable year.

(c) Total Reserves Defined.—For purposes of subsection (a), the term "total reserves" means—

(1) life insurance reserves,

(2) unearned premiums, and unpaid losses (whether or not ascertained), not included in life insurance reserves, and

(3) all other insurance reserves required by law.

The term "total reserves" does not include deficiency reserves (within the meaning of subsection (b)(4)).

(d) Adjustments in Reserves for Policy Loans.—For purposes only of determining under subsection (a) whether or not an insurance company is a life insurance company, the life insurance reserves, and the total reserves, shall each be reduced by an amount equal to the mean of the aggregates, at the beginning and end of the taxable year, of the policy loans outstanding with respect to contracts for which life insurance reserves are maintained.

(e) Guaranteed Renewable Contracts.—For purposes of this part, guaranteed renewable life, accident, and health insurance shall be treated in the same manner as noncancellable life, accident, and health insurance.

(f) Amounts Not Involving Life, Accident, or Health Contingencies.—For purposes only of determining under subsection (a) whether or not an insurance company is a life insurance company, amounts set aside and held at interest to satisfy obligations under contracts which do not contain permanent guarantees with respect to life, accident, or health contingencies shall not be included in life insurance reserves or in total reserves.

(g) Burial and Funeral Benefit Insurance Companies.—A burial or funeral benefit insurance company engaged directly in the manufacture of funeral supplies or the performance of funeral services shall not be taxable under this part but shall be taxable under section 821 or section 831.

SEC. 817. TREATMENT OF VARIABLE CONTRACTS.

(a) Increases and Decreases in Reserves.—For purposes of subsections (a) and (b) of section 807, the sum of the items described in section 807(c) taken into account as of the close of the taxable year with respect to any variable contract shall, under regulations prescribed by the Secretary, be adjusted—

(1) By substracting therefrom an amount equal to the sum of the amount added from time to time (for the taxable year) to the reserves separately accounted for in accordance with subsection (b) by reason of appreciation in value of assets (whether or not the assets have been disposed of), and

(2) by adding thereto an amount equal to the sum of the amounts substracted from time to time (for the taxable year) from such reserves by reason of depreciation in value of assets (whether or not the assets have been disposed of).

The deduction allowable for items described in paragraphs (1) and (6) of section 805(a) with respect to variable contracts shall be reduced to the the extent that the amount of such items is increased for the taxable year by appreciation (or increased to the extent that the amount of such items is decreased for the taxable year by depreciation) not reflected in adjustments under the preceding sentence.

(b) Separate Accounting.—For purposes of this part (other than section 809), a life insurance company which issues variable contracts shall separately account for the various income, exclusion, deduction, asset, reserve, and other liability items properly attributable to such variable contracts. For such items as are not accounted for directly, separate accounting shall be made—

(1) in accordance with the method regularly employed by such company, if such method is reasonable, and

(2) in all other cases, in accordance with regulations prescribed by the Secretary.

(c) Variable Contract Defined.—For purposes of this part, the term "variable contract" means a contract—

(1) which provides for the allocation of all or part of the amounts received under the contract to an account which, pursuant to State law or regulation, is segregated from the general asset accounts of the company.

(2) which—

(A) provides for the payment of annuities, or

(B) is a life insurance contract, and

(3) under which—

(A) in the case of an annuity contract, the amounts paid in, or the amount paid out, reflect the investment return and the market value of the segregated asset account, or

(B) in the case of a life insurance contract, the amount of the death benefit (or the period of coverage) is adjusted on the basis of the investment return and the market value of the segregated asset account.

If a contract ceases to reflect current investment return and current market value, such contract shall not be considered as meeting the requirements of paragraph (3) after such cessation.

(d) SPECIAL RULES FOR PENSION PLAN CONTRACTS.—

(1) TREATMENT AS PAYING ANNUITY.—A pension plan contract which is not a life, accident, or health, property, casualty, or liability insurance contract shall be treated as a contract which provides for the payment of annuities for purposes of subsection (c).

(2) BASIS OF ASSETS HELD FOR PENSION PLAN CONTRACT.—In the case of pension plan contracts which are variable contracts, the basis of each asset in a segregated asset account shall (in addition to all other adjustments to basis) be—

(A) increased by the amount of any appreciation in value, and

(B) decreased by the amount of any depreciation in value,

to the extent that such appreciation and depreciation are from time to time reflected in the increases and decreases in reserves or other items referred to in subsection (a) with respect to such contracts.

(e) OTHER SPECIAL RULES.—

(1) LIFE INSURANCE RESERVES.—For purposes of subsection (b)(1)(A) of section 816, the reflection of the investment return and the market value of the segregated asset account shall be considered an assumed rate of interest.

(2) ADDITIONAL SEPARATE COMPUTATIONS.—Under regulations prescribed by the Secretary, such additional separate computations shall be made, with respect to the items separately accounted for in accordance with subsection (b), as may be necessary to carry out the purposes of this section and this part.

(f) VARIABLE ANNUITY CONTRACTS TREATED AS ANNUITY CONTRACTS.—For purposes of this part, the term "annuity contract" includes a contract which provides for the payment of a variable annuity computed on the basis of—

(1) recognized mortality tables, and

(2)(A) the investment experience of a segregated asset account, or

(B) the company-wide investment experience of the company.

Paragraph (2)(B) shall not apply to any company which issues contracts which are not variable contracts.

SEC. 818. OTHER DEFINITIONS AND SPECIAL RULES.

(a) PENSION PLAN CONTRACTS.—For purposes of this part, the term "pension plan contract" means any contract—

(1) entered into with trusts which (as of the time the contracts were entered into) were deemed to be—

(A) trusts described in section 401(a) and exempt from tax under section 501(a), or

(B) trusts exempt from tax under section 165 of the Internal Revenue Code of 1939 or the corresponding provisions of prior revenue laws;

(2) entered into under plans which (as of the time the contracts were entered into) were deemed to be plans described in section 403(a), or plans meeting the requirements of paragraphs (3), (4), (5), and (6) of section 165(a) of the Internal Revenue Code of 1939;

(3) provided for employees of the life insurance company under a plan which, for the taxable year, meets the requirements of paragraphs (3), (4), (5), (6), (7), (8), (11), (12), (13), (14), (15), (16), (19), (20), and (22) of section 401(a);

(4) purchased to provide retirement annuities for its employees by an organization which (as of the time the contracts were purchased) was an organization described in section 501(c)(3) which was exempt from tax under section 501(a) or was an organization exempt from tax under section 101(6) of the Internal Revenue Code of 1939 or the corresponding provisions of prior revenue laws, or purchased to provide retirement annuities for employees described in section 403(b)(1)(A)(ii) by an employer which is a State, a political subdivision of a State or an agency or instrumentality of any one or more of the foregoing;

(5) entered into with trusts which (at the time the contracts were entered into) were individual retirement accounts described in section 408(a) or under contracts entered into with individual retirement annuities described in section 408(b); or

(6) purchased by—

(A) a governmental plan (within the meaning of section 414(d)), or

(B) The Government of the United States, the government of any State or political subdivision thereof, or by any agency or instrumentality of the foregoing, for use in satisfying an obligation of such government, political subdivision, or agency or instrumentality to provide a benefit under a plan described in subparagraph (A).

(b) TREATMENT OF CAPITAL GAINS AND LOSSES, ETC.—In the case of a life insurance company—

(1) in applying section 1231(a), the term "property used in the trade or business" shall be treated as including only—

(A) property used in caring on an insurance business, of a character which is subject to the allowance for depreciation provided in section 167, held for more than 1 year, and real property used in carrying on an insurance business, held for more than 1 year, which is not described in section 1231(b)(1)(A), (B), or (C), and

(B) property described in section 1231(b)(2), and

(2) in applying section 1221(2), the reference to property used in trade or business shall be treated as including only property used in carrying on an insurance business.

(c) GAIN ON PROPERTY HELD ON DECEMBER 31, 1958 AND CERTAIN SUBSTITUTED PROPERTY ACQUIRED AFTER 1958.—

(1) PROPERTY HELD ON DECEMBER 31, 1958.—In the case of property held by the taxpayer on December 31, 1958, if—

(A) the fair market value of such property on such date exceeds the adjusted basis for determining gain as of such date, and

(B) the taxpayer has been a life insurance company at all times on and after December 31, 1958.

the gain on the sale or other disposition of such property shall be treated as an amount (not less than zero) equal to the amount by which the gain (determined without regard to this subsection) exceeds the difference between the fair market value on December 31, 1958, and the adjusted basis for determining gain as of such date.

(2) CERTAIN PROPERTY ACQUIRED AFTER DECEMBER 31, 1958.—In the case of property acquired after December 31, 1958, and having a substituted basis (within the meaning of section 1016(b))—

(A) for purposes of paragraph (1), such property shall be deemed held continuously by the taxpayer since the beginning of the holding period thereof, determined with reference to section 1223,

(B) the fair market value and adjusted basis referred to in paragraph (1) shall be that of that property for which the holding period taken into account includes December 31, 1958,

(C) paragraph (1) shall apply only if the property or properties the holding periods of which are taken into account were held only by life insurance companies after December 31, 1958, during the holding periods so taken into account,

(D) the difference between the fair market value and adjusted basis referred to in paragraph (1) shall be reduced (to not less than zero) by the excess of (i) the gain that would have been recognized but for this subsection on all prior sales or dispositions after December 31, 1958, of properties referred to in subparagraph (C), over (ii) the gain that was recognized on such sales or other dispositions, and

(E) the basis of such property shall be determined as if the gain which would have been recognized but for this subsection were recognized gain.

(3) PROPERTY DEFINED.—For purposes of paragraphs (1) and (2), the term "property" does not include insurance and annuity contracts and property described in paragraph (1) of section 1221.

(d) INSURANCE OR ANNUITY CONTRACT INCLUDES CONTRACTS SUPPLEMENTARY THERETO.—For purposes of this part, the term "insurance or annuity contract" includes any contract supplementary thereto.

(e) SPECIAL RULE FOR CONSOLIDATED RETURNS.—If an election under section 1504(c)(2) is in effect with respect to an affiliated

group for the taxable year, all items of the members of such group which are not life insurance companies shall not be taken into account in determining the amount of the tentative LICTI of members of such group which are life insurance companies.

(f) ALLOCATION OF CERTAIN ITEMS FOR PURPOSES OF FOREIGN TAX CREDIT, ETC.—In applying sections 861, 862, and 863 to a life insurance company, the deduction for policyholder dividends (determined under section 808(c)), reserve adjustments under subsections (a) and (b) of section 807, and death benefits and other amounts described in section 805(a)(1) shall be treated as items which cannot definitely be allocated to an item or class of gross income.

PART III—OTHER INSURANCE COMPANIES

* * * * * * *

SEC. 832. INSURANCE COMPANY TAXABLE INCOME

(a) DEFINITION OF TAXABLE INCOME.—In the case of an insurance company subject to the tax imposed by section 831, the term "taxable income" means the gross income as defined in subsection (b)(1) less the deductions allowed by subsection (c).

Source: New.

(b) DEFINITIONS.—In the case of an insurance company subject to the tax imposed by section 831—

(1) GROSS INCOME.—The term "gross income" means the sum of—

(A) the combined gross amount earned during the taxable year, from investment income and from underwriting income as provided in this subsection, computed on the basis of the underwriting and investment exhibit of the annual statement approved by the National Association of Insurance Commissioners,

(B) gain during the taxable year from the sale or other disposition of property,

(C) all other items constituting gross income under subchapter B, except that, in the case of a mutual fire insurance company described in section 831(a)(3)(A), the amount of single deposit premiums paid to such company shall not be included in gross income,

(D) in the case of a mutual fire or flood insurance company described in section 831(a)(3)(B), an amount equal to 2 percent of the premiums earned on insurance contracts during the taxable year with respect to policies described in section 831(a)(3)(B) after deduction of premium deposits returned or credited during the same taxable year, and

(E) in the case of a company which writes mortgage guaranty insurance, the amount required by subsection (e)(5) to be subtracted from the mortgage guaranty account.

(2) INVESTMENT INCOME.—The term "investment income" means the gross amount of income earned during the taxable year from interest, dividends, and rents, computed as follows: To all interest, dividends, and rents received during the taxable year, add interest, dividends, and rents due and accrued at the end of the taxable year, and deduct all interest, divi-

dends, and rents due and accrued at the end of the preceding taxable year.

(3) UNDERWRITING INCOME.—The term "underwriting income" means the premiums earned on insurance contracts during the taxable year less losses incurred and expenses incurred.

(4) PREMIUMS EARNED.—The term "premiums earned on insurance contracts during the taxable year" means an amount computed as follows:

(A) From the amount of gross premiums written on insurance contracts during the taxable year, deduct return premiums and premiums paid for reinsurance.

(B) To the result so obtained, add unearned premiums on outstanding business at the end of the preceding taxable year and deduct unearned premiums on outstanding business at the end of the taxable year.

For purposes of this subsection, unearned premiums shall include life insurance reserves, as defined in section [801(b),] *section 816(b) but determined as provided in section 807,* pertaining to the life, burial, or funeral insurance, or annuity business of an insurance company subject to the tax imposed by section 831 and not qualifying as a life insurance company under section [801] *816.* For purposes of this subsection, unearned premiums of mutual fire or flood insurance companies described in section 831(a)(3)(B) means (with respect to the policies described in section 831(a)(3)(B) the amount of unabsorbed premium deposits which the company would be obligated to return to its policyholders at the close of the taxable year if all of its policies were terminated at such time; and the determination of such amount shall be based on the schedule of unabsorbed premium deposit returns for each such company then in effect. Premiums paid by the subscriber of a mutual flood insurance company referred to in paragraph (3) of section 831(a) shall be treated, for purposes of computing the taxable income of such subscriber, in the same manner as premiums paid by a policyholder to a mutual fire insurance company referred to in such paragraph (3).

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PART IV—PROVISIONS OF GENERAL APPLICATION

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SEC. 841. CREDIT FOR FOREIGN TAXES.

The taxes imposed by foreign countries or possessions of the United States shall be allowed as a credit against the tax of a domestic insurance company subject to the tax imposed by section [802], *801,* 821, or 831, to the extent provided in the case of a domestic corporation in section 901 (relating to foreign tax credit). For purposes of the preceding sentence (and for purposes of applying section 906 with respect to a foreign corporation subject to tax under this subchapter), the term "taxable income" as used in section 904 means—

(1) in the case of the tax imposed by section [802,] *801,* the life insurance company taxable income (as declined in section [802] *801*(b)),

(2) in the case of the tax imposed by section 821(a), the mutual insurance company taxable income (as defined in section 821(b)); and in the case of the tax imposed by section 821(c), the taxable investment income (as defined in section 822(a)), and

(3) in the case of the tax imposed by section 831, the taxable income (as defined in section 832(a)).

* * * * * * *

SEC. 844. SPECIAL LOSS CARRYOVER RULES.

(a) General Rule.—If an insurance company—

(1) is subject to the tax imposed by part I, II, or III of this subchapter for the taxable year, and

(2) was subject to the tax imposed by a different part of this subchapter for a prior taxable year beginning after December 31, 1962,

then any operations loss carryover under [section 812,] *section 810 (or the corresponding provisions of prior law),* unused loss carryover under section 825, or net operating loss carryover under section 172, as the case may be, arising in such prior taxable year shall be included in its operations loss deduction under section [812] *810* (a), unused loss deduction under section 825(a), or net operating loss deduction under section 832(c)(10), as the case may be.

(b) Limitation.—The amount included under section [812] *810* (a), 825(a), or 832(c)(10), as the case may be, by reason of the application of subsection (a) shall not exceed the amount that would have constituted the loss carryover under such section if for all relevant taxable years such company had been subject to the tax imposed by the part referred to in subsection (a)(1) rather than the part referred to in subsection (a)(2). For purposes of applying the preceding sentence—

(1) in the case of a mutual insurance company which becomes a stock insurance company, an amount equal to 25 percent of the deduction under section 832(c)(11) (relating to dividends to policyholders) shall not be allowed, and

(2) section [812] *810*(b)(1)(C) (relating to additional years to which losses may be carried by new life insurance companies) shall not apply.

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Subchapter N—Tax Based on Income From Sources Within or Without the United States

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PART II—NONRESIDENT ALIENS AND FOREIGN CORPORATIONS

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Subpart A—Nonresident Alien Individuals

Sec. 871. Tax on nonresident alien individuals.
Sec. 872. Gross income.
Sec. 873. Deductions.
Sec. 874. Allowance of deductions and credits.
Sec. 875. Partnerships; beneficiaries of estates and trusts.
Sec. 876. Alien residents of Puerto Rico.
Sec. 877. Expatriation to avoid tax.
Sec. 878. Foreign educational, charitable, and certain other exempt organizations.
Sec. 879. Tax treatment of certain community income in the case of [a resident or citizen of the United States who is married to a nonresident alien individual.] nonresident alien individuals.

SEC. 871. TAX ON NONRESIDENT ALIEN INDIVIDUALS.

(a) Income Not Connected With United States Business—30 Percent Tax.—

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(g) Cross References.—

(1) For tax treatment of certain amounts distributed by the United States to nonresident alien individuals, see section 402(a)(4).

(2) For taxation of nonresident alien individuals who are expatriate United States citizens, see section 877.

(3) For doubling of tax on citizens of certain foreign countries, see section 891.

(4) For adjustment of tax in case of nationals or residents of certain foreign countries, see section 896.

(5) For withholding of tax at source on nonresident alien individuals, see section 1441.

[(6) For the requirement of making a declaration of estimated tax by certain nonresident alien individuals, see section 6015(j).]

[(7)] *(6)* For election to treat married nonresident alien individual as resident of United States in certain cases, see subsections (g) and (h) of section 6013.

[(8)] *(7)* For special tax treatment of gain or loss from the disposition by a nonresident alien individual of a United States real property interest, see section 897.

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SEC. 874. ALLOWANCE OF DEDUCTIONS AND CREDITS.

(a) Return Prerequisite to Allowance.—A nonresident alien individual shall receive the benefit of the deductions and credits allowed to him in this subtitle only by filing or causing to be filed with the Secretary a true and accurate return, in the manner prescribed in subtitle F (sec. 6001 and following, relating to procedure and administration), including therein all the information which the Secretary may deem necessary for the calculation of such deductions and credits. This subsection shall not be construed to deny the credits provided by sections 31 and [32] *33* for tax withheld at source or credit provided by section [39] *34* for certain uses of gasoline and special fuels.

(b) Tax Withheld at Source.—The benefit of the deduction for exemptions under section 151 may, in the discretion of the Secretary, and under regulations prescribed by the Secretary, be received by a nonresident alien individual entitled thereto, by filing a claim therefor with the withholding agent.

(c) Foreign Tax Credit.—Except as provided in section 906, a nonresident alien individual shall not be allowed the credits against the tax for taxes of foreign countries and possessions of the United States allowed by section 901.

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SEC 879. TAX TREATMENT OF CERTAIN COMMUNITY INCOME IN THE CASE OF [A RESIDENT OR CITIZEN OF THE UNITED STATES WHO IS MARRIED TO A NONRESIDENT ALIEN INDIVIDUAL.] *NONRESIDENT ALIEN INDIVIDUALS.*

(a) General Rule.—In the case of a [citizen or resident of the United States who is married to a nonresident alien individual and who has] *married couple 1 or both of whom are nonresident alien individuals and who have* community income for the taxable year, such community income shall be treated as follows:

(1) Earned income (within the meaning of section 911(d)(2)), other than trade or business income and a partner's distributive share of partnership income, shall be treated as the income of the spouse who rendered the personal services,

(2) Trade or business income, and a partner's distributive share of partnership income, shall be treated as provided in section 1402(a)(5),

(3) Community income not described in paragraph (1) or (2) which is derived from the separate property (as determined under the applicable community property law) of one spouse shall be treated as the income of such spouse, and

(4) All other such community income shall be treated as provided in the applicable community property law.

(b) Exception Where Election Under Section 6013(g) Is in Effect.—Subsection (a) shall not apply for any taxable year for which an election under subsection (g) or (h) of section 6013 (relating to election to treat nonresident alien individual as resident of the United States) is in effect.

(c) Definitions and Special Rules.—For purposes of this section—

(1) Community income.—The term "community income" means income which, under applicable community property laws, is treated as community income.

(2) Community property laws.—The term "community property laws" means the community property laws of a State, a foreign country, or a possession of the United States.

(3) Determination of marital status.—The determination of marital status shall be made under section 143(a).

Subpart B—Foreign Corporations

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SEC. 882. TAX ON INCOME OF FOREIGN CORPORATIONS CONNECTED WITH UNITED STATES BUSINESS.

(a) Imposition of Tax.—

(1) In general.—A foreign corporation engaged in trade or business within the United States during the taxable year shall be taxable as provided in section 11 or 1201(a) on its tax-

able income which is effectively connected with the conduct of a trade or business within the United States.

(2) Determination of taxable income.—In determining taxable income for purposes of paragraph (1), gross income includes only gross income which is effectively connected with the conduct of a trade or business within the United States.

(3) For special tax treatment of gain or loss from the disposition by a foreign corporation of a United States real property interest, see section 897.

(b) Gross Income.—In the case of a foreign corporation, gross income includes only—

(1) gross income which is derived from sources within the United States and which is not effectively connected with the conduct of a trade or business within the United States, and

(2) gross income which is effectively connected with the conduct of a trade or business within the United States.

(c) Allowance of Deductions and Credits.—

(1) Allocation of deductions.—

(A) General rule.—In the case of a foreign corporation, the deductions shall be allowed only for purposes of subsection (a) and (except as provided by subparagraph (B) only if and to the extent that they are connected with income which is effectively connected with the conduct of a trade or business within the United States; and the proper apportionment and allocation of the deductions for this purpose shall be determined as provided in regulations prescribed by the Secretary.

(B) Charitable contributions.—The deduction for charitable contributions and gifts provided by section 170 shall be allowed whether or not connected with income which is effectively connected with the conduct of a trade or business within the United States.

(2) Deductions and credits allowed only if return filed.—A foreign corporation shall receive the benefit of the deductions and credits allowed to it in this subtitle only by filing or causing to be filed with the Secretary a true and accurate return, in the manner prescribed in subtitle F, including therein all the information which the Secretary may deem necessary for the calculation of such deductions and credits. The preceding sentence shall not apply for purposes of the tax imposed by section 541 (relating to personal holding company tax), and shall not be construed to deny the credit provided by section [32]*33* for tax withheld at source or the credit provided by section [39] *34* for certain uses of gasoline.

(3) Foreign tax credit.—Except as provided by section 906, foreign corporations shall not be allowed the credit against the tax for taxes of foreign countries and possessions of the United States allowed by section 901.

(4) Cross reference.—

For rule that certain foreign taxes are not to be taken into account in determining deduction or credit, see section 906(b)(1).

(d) Election To Treat Real Property Income as Income Connected With United States Business.—

(1) IN GENERAL.—A foreign corporation which during the taxable year derives any income—

(A) from real property located in the United States, or from any interest in such real property, including (i) gains from the sale or exchange of real property or an interest therein, (ii) rents or royalties from mines, wells, or other natural deposits, and (iii) gains described in section 631(b) or (c), and

(B) which, but for this subsection, would not be treated as income effectively connected with the conduct of a trade or business within the United States,

may elect for such taxable year to treat all such income as income which is effectively connected with the conduct of a trade or business within the United States. In such case, such income shall be taxable as provided in subsection (a)(1) whether or not such corporation is engaged in trade or business within the United States during the taxable year. An election under this paragraph for any taxable year shall remain in effect for all subsequent taxable years, except that it may be revoked with the consent of the Secretary with respect to any taxable year.

(2) ELECTION AFTER REVOCATION, ETC.—Paragraphs (2) and (3) of section 871(d) shall apply in respect of elections under this subsection in the same manner and to the same extent as they apply in respect of elections under section 871(d).

(e) INTEREST ON UNITED STATES OBLIGATIONS RECEIVED BY BANKS ORGANIZED IN POSSESSIONS.—In the case of a corporation created or organized in, or under the law of, a possession of the United States which is carrying on the banking business in a possession of the United States, interest on obligations of the United States shall—

(1) for purposes of this subpart, be treated as income which is effectively connected with the conduct of a trade or business within the United States, and

(2) shall be taxable as provided in subsection (a)(1) whether or not such corporation is engaged in trade or business within the United States during the taxable year.

(f) RETURNS OF TAX BY AGENT.—If any foreign corporation has no office or place of business in the United States but has an agent in the United States, the return required under section 6012 shall be made by the agent.

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Subpart C—Miscellaneous Provisions

Sec. 891. Doubling of rates of tax on citizens and corporations of certain foreign countries.
Sec. 892. Income of foreign governments and of international organizations.
Sec. 893. Compensation of employees of foreign governments or international organizations.
Sec. 894. Income affected by treaty.
Sec. 895. Income derived by a foreign central bank of issue from obligations of the United States or from bank deposits.
Sec. 896. Adjustment of tax on nationals, residents, and corporations of certain foreign countries.

SEC. 891. DOUBLING OF RATES OF TAX ON CITIZENS AND CORPORATIONS OF CERTAIN FOREIGN COUNTRIES.

Whenever the President finds that, under the laws of any foreign country, citizens or corporations of the United States are being subjected to discriminatory or extraterritorial taxes, the President shall so proclaim and the rates of tax imposed by sections 1, 3, 11, [802,] *801,* 821, 831, 852, 871, and 881 shall, for the taxable year during which such proclamation is made and for each taxable year thereafter, be doubled in the case of each citizen and corporation of such foreign country, but the tax at such doubled rate shall be considered as imposed by such sections as the case may be. In no case shall this section operate to increase the taxes imposed by such sections (computed without regard to this section) to an amount in excess of 80 percent of the taxable imcome of the taxpayer (computed without regard to the deductions allowable under section 151 and under part VIII of subchapter B). Whenever the President finds that the law of any foreign country with respect to which the President has made a proclamation under the preceding provisions of this section have been modified so that discriminatory and extraterritorial taxes applicable to citizens and corporations of the United States have been removed, he shall so proclaim, and the provisions of this section providing for doubled rates of tax shall not apply to any citizen or corporation of such foreign country with respect to any taxable year beginning after such proclamation is made.

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PART III—INCOME FROM SOURCES WITHOUT THE UNITED STATES

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Subpart A—Foreign Tax Credit

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SEC. 901. TAXES OF FOREIGN COUNTRIES AND OF POSSESSIONS OF UNITED STATES.

(a) ALLOWANCE OF CREDIT.—If the taxpayer chooses to have the benefits of this subpart, the tax imposed by this chapter shall, subject to the limitation of section 904, be credited with the amounts provided in the applicable paragraph of subsection (b) plus, in the case of a corporation, the taxes deemed to have been paid under sections 902 and 960. Such choice for any taxable year may be made or changed at any time before the expiration of the period prescribed for making a claim for credit or refund of the tax imposed by this chapter for such taxable year. [The credit shall not be allowed against the tax imposed by section 56 (relating to corporate minimum tax), against the tax imposed for the taxable year under section 72(m)(5)(B) (relating to 10 percent tax on premature distributions to owner-employees), section 72(q)(1) (relating to 5-percent tax on premature distributions under annuity contracts), against the tax imposed by section 402(e) (relating to tax on lump sum distributions), against the tax imposed for the taxable year by section 408(f) (relating to additional tax on income from certain retirement accounts), against the tax imposed by section 531 (relating to the tax on accumulated earnings), against the additional tax imposed for the taxable year under section 1351 (relating to recoveries of foreign expropriation losses), or against the personal holding company tax imposed by section 541.] *The credit shall not be allowed against any tax treated as a tax not imposed by this chapter under section 25(b).*

* * * * * * *

(b) AMOUNT ALLOWED.—Subject to the limitation of section 904, the following amounts shall be allowed as the credit under subsection (a):

(1) CITIZENS AND DOMESTIC CORPORATIONS.—In the case of a citizen of the United States and of a domestic corporation, the amount of any income, war profits, and excess profits taxes paid or accrued during the taxable year to any foreign country or to any possession of the United States; and

(2) RESIDENT OF THE UNITED STATES OR PUERTO RICO.—In the case of a resident of the United States and in the case of an individual who is a bona fide resident of Puerto Rico during the entire taxable year, the amount of any such taxes paid or accrued during the taxable year to any possession of the United States; and

(3) ALIEN RESIDENT OF THE UNITED STATES OR PUERTO RICO.—In the case of an alien resident of the United States and in the case of an alien individual who is a bona fide resident of Puerto Rico during the entire taxable year, the amount of any such taxes paid or accrued during the taxable year to any foreign country; and

(4) NONRESIDENT ALIEN INDIVIDUALS AND FOREIGN CORPORATIONS.—In the case of any nonresident alien individual not described in section 876 and in the case of any foreign corporation, the amount determined pursuant to section 906; and

(5) PARTNERSHIPS AND ESTATES.—In the case of any individual described in paragraph (1), (2), (3), or (4) who is a member of a partnership or a beneficiary of an estate or trust, the amount of his proportionate share of the taxes (described in such paragraph) of the partnership or the estate or trust paid or accrued during the taxable year to a foreign country or to any possession of the United States, as the case may be.

SEC. 904. LIMITATION ON CREDIT.

(a) LIMITATION.—The total amount of the credit taken under section 901(a) shall not exceed the same proportion of the tax against which such credit is taken which the taxpayer's taxable income from sources without the United States (but not in excess of the taxpayer's entire taxable income) bears to his entire taxable income for the same taxable year. For purposes of the preceding sentence in the case of an individual the entire taxable income shall be reduced by an amount equal to the zero bracket amount.

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[(g) COORDINATION WITH CREDIT FOR THE ELDERLY.—In the case of an individual, for purposes of subsection (a) the tax against which the credit is taken is such tax reduced by the amount of the credit (if any) for the taxable year allowable under section 37 (relating to credit for the elderly and the permanently and totally disabled).]

(g) Coordination With Nonrefundable Personal Credits.—In the case of an individual, for purposes of subsection (a), the tax against which the credit is taken is such tax reduced by the sum of the credits allowable under subpart A of part IV of subchapter A of this chapter.

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Subpart D—Possessions of the United States

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SEC. 936. PUERTO RICO AND POSSESSION TAX CREDIT.

(a) Allowance of Credit.—* * *

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(h) Tax Treatment of Intangible Property Income.—

(1) In General.—

(A) Income attributable to shareholders.—The intangible property income of a corporation electing the application of this section for any taxable year shall be included on a pro rata basis in the gross income of all shareholders of such electing corporation at the close of the taxable year of such electing corporation as income from sources within the United States for the taxable year of such shareholder in which or with which the taxable year of such electing corporation ends.

(B) Exclusion from the income of an electing corporation.—Any intangible property income of a corporation electing the application of this section which is included in the gross income of a shareholder of such corporation by reason of subparagraph (A) shall be excluded from the gross income of such corporation.

(2) Foreign shareholders, shareholders not subject to tax.—

(A) In general.—Paragraph (1)(A) shall not apply with respect to any shareholder—

(i) who is not a United States person, or

(ii) who is not subject to tax under this title on intangible property income which would be allocated to such shareholder (but for this subparagraph).

(B) Treatment of nonallocated intangible property income.—For purposes of this subtitle, intangible property income of a corporation electing the application of this section which is not included in the gross income of a shareholder of such corporation by reason of subparagraph (A)—

(i) shall be treated as income from sources within the United States, and

(ii) shall not be taken into account under subsection (a)(2).

(3) Intangible property income.—For purposes of this subsection—

(A) IN GENERAL.—The term "intangible property income" means the gross income of a corporation attributable to any intangible property other than intangible property which has been licensed to such corporation since prior to 1948 and is in use by such corporation on the date of the enactment of this subparagraph.

(B) INTANGIBLE PROPERTY.—The term "intangible property" means any—

(i) patent, invention, formula, process, design, pattern, or know how;

(ii) copyright, literary, musical, or artistic composition;

(iii) trademark, trade name, or brand name;

(iv) franchise, license, or contract;

(v) method, program, system, procedure, campaign, survey, study, forecast, estimate, customer list, or technical data; or

(vi) any similar item,

which has substantial value independent of the services of any individual.

(C) EXCLUSION OF REASONABLE PROFIT.—The term "intangible property income" shall not include any portion of the income from the sale, exchange or other disposition of any product, or from the rendering of services, by a corporation electing the application of this section which is determined by the Secretary to be a reasonable profit on the direct and indirect costs incurred by such electing corporation which are attributable to such income.

(D) RELATED PERSON.—

(i) IN GENERAL.—A person (hereinafter referred to as the "related person") is related to any person if—

(I) the related person bears a relationship to such person specified in section 267(b) or section 707(b)(1), or

(II) the related person and such person are members of the same controlled group of corporations.

(ii) SPECIAL RULES.—For purposes of clause (i)—

(I) section 267(b) and section 707(b)(1) shall be applied by substituting "10 percent" for "50 percent", and

(II) section 267(b)(3) shall be applied without regard to whether a person was a personal holding company or a foreign personal holding company.

(E) CONTROLLED GROUP OF CORPORATIONS.—The term "controlled group of corporations" has the meaning given to such term by section 1563(a), except that—

(i) "more than 10 percent" shall be substituted for "at least 80 percent" and "more than 50 percent" each place either appears in section 1563(a), and

(ii) the determination shall be made without regard to subsections (a)(4), (b)(2), and (e)(3)(C) of section 1563.

(4) DISTRIBUTIONS TO MEET QUALIFICATION REQUIREMENTS.—

(A) **In general.**—If the Secretary determines that a corporation does not satisfy a condition specified in subparagraph (A) or (B) of subsection (a)(2) for any taxable year by reason of the exclusion from gross income under paragraph (1)(B), such corporation, shall nevertheless be treated as satisfying such condition for such year if it makes a pro rata distribution of property after the close of such taxable year to its shareholders (designated at the time of such distribution as a distribution to meet qualification requirements) with respect to their stock in an amount which is equal to—

(i) if the condition of subsection (a)(2)(A) is not satisfied, that portion of the gross income for the period described in subsection (a)(2)(A)—

(I) which was not derived from sources within a possession, and

(II) which exceeds the amount of such income for such period which would enable such corporation to satisfy the condition of subsection (a)(2)(A),

(ii) if the condition of subsection (a)(2)(B) is not satisfied, that portion of the gross income for such period—

(I) which was not derived from the active conduct of a trade or business within a possession, and

(II) which exceeds the amount of such income for such period which would enable such corporation to satisfy the condition of subsection (a)(2)(B), or

(iii) if neither of such conditions is satisfied, that portion of the gross income which exceeds the amount of gross income for such period which would enable such corporation to satisfy the conditions of subparagraph (A) and (B) of subsection (a)(2).

(B) **Effectively connected income.**—In the case of a shareholder who is a nonresident alien individual or a foreign corporation, trust, or estate, any distribution described in subparagraph (A) shall be treated as income which is effectively connected with the conduct of a trade or business conducted through a permanent establishment of such shareholder within the United States.

(C) **Distribution denied in case of fraud or willful neglect.**—Subparagraph (A) shall not apply to a corporation if the determination of the Secretary described in subparagraph (A) contains a finding that the failure of such corporation to satisfy the conditions in subsection (a)(2) was due in whole or in part to fraud with intent to evade tax or willful neglect on the part of such corporation.

(5) **Election out.**—

(A) **In general.**—The rules contained paragraphs (1) through (4) do not apply for any taxable year if an election pursuant to subparagraph (F) is in effect to use one of the methods specified in subparagraph (C).

(B) **Eligibility.**—

(i) REQUIREMENT OF SIGNIFICANT BUSINESS PRESENCE.—An election may be made to use one of the methods specified in subparagraph (C) with respect to a product or type of service only if an electing corporation has a significant business presence in a possession with respect to such product or type of service. An election may remain in effect with respect to such product or type of service for any subsequent taxable year only if such electing corporation maintains a significant business presence in a possession with respect to such product or type of service in such subsequent taxable year. If an election is not in effect for a taxable year because of the preceding sentence, the electing corporation shall be deemed to have revoked the election on the first day of such taxable year.

(ii) DEFINITION.—For purposes of this paragraph, an electing corporation has a "significant business presence" in a possession for a taxable year with respect to a product or type of service if:

(I) the total production costs (other than direct material costs and other than interest excluded by regulations prescribed by the Secretary) incurred by the electing corporation in the possession in producing units of that product sold or otherwise disposed of during the taxable year by the affiliated group to persons who are not members of the affiliated group are not less than 25 percent of the difference between (a) the gross receipts from sales or other dispositions during the taxable year by the affiliated group to persons who are not members of the affiliated group of such units of the products produced, in whole or in part, by the electing corporation in the possession and (b) the direct material costs of the purchase of materials for such units of that product by all members of the affiliated group from persons who are not members of the affiliated group; or

(II) no less than 65 percent of the direct labor costs of the affiliated group for units of the product produced during the taxable year in whole or in part by the electing corporation or for the type of service rendered by the electing corporation during the taxable year, is incurred by the electing corporation and is compensation for services performed in the possession; or

(III) with respect to purchases and sales by an electing corporation of all goods not produced in whole or in part by any member of the affiliated group and sold by the electing corporation to persons other than members of the affiliated group, no less than 65 percent of the total direct labor costs of the affiliated group in connection with all purchases and sales of such goods sold during the taxable year by such electing corporation is incurred by such electing corporation and is compensation for services performed in the possession. Notwithstanding satisfaction of one of the foregoing tests, an electing corporation shall not be treated as having a significant business presence in a possession with respect to a product produced in whole or in part by the electing corporation in the possession, for purposes of an election to use the method specified in subparagraph (C)(ii), unless such product is manufactured or produced in the possession by the electing corporation within the meaning of subsection (d)(1)(A) of section 954.

(iii) SPECIAL RULES.—

(I) An electing corporation which produces a product or renders a type of service in a possession on the date of the enactment of this clause is not required to meet the significant business presence test in a possession with respect to such product or type of service for its taxable years beginning before January 1, 1986.

(II) For purposes of this subparagraph the costs incurred by an electing corporation or any other member of the affiliated group in connection with contract manufacturing by a person other than a member of the affiliated group, or in connection with a similar arrangement thereto, shall be treated as direct labor costs of the affiliated group and shall not be treated as production costs incurred by the electing corporation in the possession or as direct material costs or as compensation for services performed in the possession, except to the extent as may be otherwise provided in regulations prescribed by the Secretary.

(iv) REGULATIONS.—The Secretary may prescribe regulations setting forth:

(I) an appropriate transitional (but not in excess of three taxable years) significant business presence test for commencement in a possession of operations with respect to products or types of service after the date of the enactment of this clause and not described in subparagraph (B)(iii)(I),

(II) a significant business presence test for other appropriate cases, consistent with the tests specified in subparagraph (B)(ii),

(III) rules for the definition of a product or type of service, and

(IV) rules for treating components produced in whole or in part by a related person as materials, and the costs (including direct labor costs) related thereto as a cost of materials, where there is an independent resale price for such components or where otherwise consistent with the intent of the substantial business presence tests.

(C) METHODS OF COMPUTATION OF TAXABLE INCOME.—If an election of one of the following methods is in effect pursuant to subparagraph (F) with respect to a product or type of service, an electing corporation shall compute its income derived from the active conduct of a trade or business in a possession with respect to such product or type of service in accordance with the method which is elected.

(i) COST SHARING.—

(I) PAYMENT OF COST SHARING.—If an election of this method is in effect, the electing corporation must make a payment for its share of the cost (if any) of product area research which is paid or accrued by the affiliated group during that taxable year. Such share shall not be less than the same proportion of the cost of such product area research which the amount of "possession sales" bears to the amount of "total sales" of the affiliated group. The cost of product area research paid or accrued solely by the electing corporation in a taxable year (excluding amounts paid directly or indirectly to or on behalf of related persons and excluding amounts paid under any cost sharing agreements with related persons) will reduce (but not below zero) the amount of the electing corporation's cost sharing payment under this method for that year.

(a) PRODUCT AREA RESEARCH.—For purposes of this section, the term "product area research" includes (nothwithstanding any provision to the contrary) the research development and experimental costs, losses, expenses and other related deductions—including amounts paid or accrued for the performance of research or similar activities by another person; qualified research expenses within the meaning of section [44F(b)] *30(b);* amounts paid or accrued for the use of, or the right to use research or any of the items specified in subsection (h)(3)(B)(i); and a proper allowance for amounts incurred for the acquisition of any of the items specified in subsection (h)(3)(B)(i)—which are properly apportioned or allocated to the same product area as that in which the electing corporation conducts its activities, and a ratable part of any such costs, losses expenses and other deductions which cannot definitely be allocated to a particular product area.

(b) AFFILIATED GROUP.—For purposes of this subsection, the term "affiliated group" shall mean the electing corporation and all other organizations, trades or businesses (whether or not incorporated, whether or not organized in the United States, and whether or not affiliated) owned or controlled directly or indirectly by the same interests, within the meaning of section 482.

(c) POSSESSION SALES.—For purposes of this section, the term "possession sales" means the aggregate sales or other dispositions for the taxable year to persons who are not members of the affiliated group by members of the affiliated group of products produced, in whole or in part, by the electing corporation in the possession which are in the same product area as is used for determining the amount of product area research, and of services rendered, in whole or in part, in the possession in such product area to persons who are not members of the affiliated group.

(d) TOTAL SALES.—For purposes of this section, the term "total sales" means the aggregate sales or other dispositions for the taxable year to persons who are not members of the affiliated group by members of the affiliated group of all products in the same product area as is used for determining the amount of product area research, and of services rendered in such product area to persons who are not members of the affiliated group.

(e) PRODUCT AREA.—For purposes of this section, the term "product area" shall be defined by reference to the three-digit classification of the Standard Industrial Classification code. The Secretary may provide for the aggregation of two or more three-digit classifications where appropriate, and for a classification system other than the Standard Industrial Classification code in appropriate cases.

(II) EFFECT OF ELECTION.—For purposes of determining the amount of its gross income derived from the active conduct of a trade or business in a possession with respect to a product produced by, or type of service rendered by, the electing corporation for a taxable year, if an election of this method is in effect, the electing corporation shall be treated as the owner (for purposes of obtaining a return thereon) of intangible property described in subsection (h)(3)(B)(i) which is related to the units of the product produced, or type of service rendered, by the electing corporation. Such electing corporation shall not be treated as the owner (for purposes of obtaining a return thereon) of any intangible property described in subsection (h)(3)(B)(ii) through (v) (to the extent not described in subsection (h)(3)(B)(i)) or of any other nonmanufacturing intangible. Notwithstanding the preceding sentence, an electing corporation shall be treated as the owner (for purposes of obtaining a return thereon) of (a) intangible property which was developed solely by such corporation in a possession and is owned by such corporation, (b) intangible property described in subsection (h)(3)(B)(i) acquired by such corporation from a person who was not related to such corporation (or to any person related to such corporation) at the time of, or in connection with such acquisition, and (c) any intangible property described in subsection (h)(3)(B)(ii) through (v) (to the extent not described in subsection (H)(3)(B)(i)) and other nonmanufacturing intangibles which relate to sales of units of products, or services rendered to unrelated persons for ultimate consumption or use in the possession in which the electing corporation conducts its trade or business.

(III) PAYMENT PROVISIONS.—

(a) The cost sharing payment determined under subparagraph (C)(i)(I) for any taxable year shall be made to the person or persons specified in subparagraph (C)(i)(IV)(a) not later than the time prescribed by law for filing the electing corporation's return for such taxable year (including any extensions thereof). If all or part of such payment is not timely made, the amount of the cost sharing payment required to be paid shall be increased by the amount of interest that would have been due under section 6601(a) had the portion of the cost sharing payment that is not timely made been an amount of tax imposed by this title and had the last date prescribed for payment been the due date of the electing corporations return (determined without regard to any extension thereof). The amount by which a cost sharing payment determined under subparagraph (C)(i)(I) is increased by reason of the preceding sentence shall not be treated as a cost sharing payment or as interest. If failure to make timely payment is due in whole or in part to fraud or willful neglect, the electing corporation shall be deemed to have revoked the election made under subparagraph (A) on the first day of the taxable year for which the cost sharing payment was required.

(b) For purposes of this title, any tax of a foreign country or possession of the United States which is paid or accrued with respect to the payment or receipt of a cost sharing payment determined under subparagraph (C)(i)(I) or of an amount of increase referred to in subparagraph (C)(i)(III)(a) shall not be treated as income, war profits, or excess profits taxes paid or accrued to a foreign country or possession of the United States, and no deduction shall be allowed under this title with respect to any amounts of such tax so paid or accrued.

(IV) SPECIAL RULES.—

(a) The amount of the cost sharing payment determined under subparagraph (C)(i)(I), and any increase in the amount thereof in accordance with subparagraph (C)(i)(III)(a), shall not be treated as income of the recipient, but shall reduce the amount of the deductions (and the amount of reductions in earnings and profits) otherwise allowable to the appropriate domestic member or members (other than an electing corporation) of the affiliated group, or, if there is no such domestic member, to the foreign member or members of such affiliated group as the Secretary may provide under regulations.

(b) If an election of this method is in effect, the electing corporation shall determine its intercompany pricing under the appropriate section 482 method, provided, however, that an electing corporation shall not be denied use of the resale price method for purposes of such intercompany pricing merely because the reseller adds more than an insubstantial amount to the value of the product by the use of intangible property.

(c) the amount of qualified research expenses, (within the meaning of section [44F,] *30*, of any member of the controlled group of corporations (as defined in section [*44F*] *30(f)*) of which the electing corporation is a member shall not be affected by the cost sharing payment required under this method.

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Subpart F—Controlled Foreign Corporations

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SEC. 951. AMOUNTS INCLUDED IN GROSS INCOME OF UNITED STATES SHAREHOLDERS.

(a) AMOUNTS INCLUDED.—

(1) IN GENERAL.—If a foreign corporation is a controlled foreign corporation for an uninterrupted period of 30 days or more during any taxable year, every person who is a United States shareholder (as defined in subsection (b)) of such corporation and who owns (within the meaning of section 958(a)) stock in such corporation on the last day, in such year, on which such corporation is a controlled foreign corporation shall

include in his gross income, for his taxable year in which or with such taxable year of the corporation ends—

(A) the sum of—

(i) his pro rata share (determined under paragraph (2)) of the corporation's subpart F income for such year,

(ii) his pro rata share (determined under section 955(a)(3) as in effect before the enactment of the Tax Reduction Act of 1975) of the corporation's previously excluded subpart F income withdrawn from investment in less developed countries for such year, and

(iii) his pro rata share (determined under section 955(a)(3)) of the corporation's previously excluded subpart F income withdrawn from foreign base company shipping operations for such year; and

(B) his pro rata share (determined under section 956(a)(2)) of the corporation's increase in earnings invested in United States property for such year (but only to the extent not excluded from gross income under section 959(a)(2)).

(2) PRO RATA SHARE OF SUBPART F INCOME.—The pro rata share referred to in paragraph (1)(A)(i) in the case of any United States shareholder is the amount—

(A) which would have been distributed with respect to the stock which such shareholder owns (within the meaning of section 958(a)) in such corporation if on the last day, in its taxable year, on which the corporation is a controlled foreign corporation it had distributed pro rata to its shareholders an amount (i) which bears the same ratio to its subpart F income for the taxable year, as (ii) the part of such year during which the corporation is a controlled foreign corporation bears to the entire year, reduced by

(B) the amount of distributions received by any other person during such year as a dividend with respect to such stock but only to the extent of the dividend which would have been received if the distribution by the corporation had been the amount (i) which bears the same ratio to the subpart F income of such corporation for the taxable year, as (ii) the part of such year during which such shareholder did not own (within the meaning of section 958(a)) such stock bears to the entire year.

(3) LIMITATION ON PRO RATA SHARE OF PREVIOUSLY EXCLUDED SUBPART F INCOME WITHDRAWN FROM INVESTMENT.—For purposes of paragraph (1)(A)(iii), the pro rata share of any United States shareholder of the previously excluded subpart F income of a controlled foreign corporation withdrawn from investment in foreign base company shipping operations shall not exceed an amount—

(A) which bears the same ratio to his pro rata share of such income withdrawn (as determined under section 955(a)(3)) for the taxable year, as

(B) the part of such year during which the corporation is a controlled foreign corporation bears to the entire year.

(4) LIMITATION ON PRO RATA SHARE OF INVESTMENT IN UNITED STATES PROPERTY.—For purposes of paragraph (1)(B), the pro rata share of any United States shareholder in the increase of the earnings of a controlled foreign corporation invested in United States property shall not exceed an amount (A) which bears the same ratio to his pro rata share of such increase (as determined under section 956(a)(2)) for the taxable year, as (B) the part of such year during which the corporaton is a controlled foreign corporation bears to the entire year.

(b) UNITED STATES SHAREHOLDER DEFINED.—For purposes of this subpart, the term "United States shareholder means, with respect to any foreign corporation, a United States person (as defined in section 957(d)) who owns (within the meaning of section 958(a)), or is considered as owning by applying the rules of ownership of section 958(b), 10 percent or more the total combined voting power of all classes of stock entitled to vote of such foreign corporation.

(c) COORDINATION WITH ELECTION OF A FOREIGN INVESTMENT COMPANY TO DISTRIBUTE INCOME.—A United States shareholder who, for his taxable year, is a qualified shareholder (within the meaning of section 1247(c)) of a foreign investment company with respect to which an election under section 1247 is in effect shall not be required to include in gross income, for such taxable year, any amount under subsection (a) with respect to such company.

[(d) COORDINATION WITH FOREIGN PERSONAL HOLDING COMPANY PROVISIONS.—A United States shareholder who, for his taxable year, is subject to tax under section 551(b) (relating to foreign personal holding company income included in gross income of United States shareholders) on income of a controlled foreign corporation shall not be required to include in gross income, for such taxable year, any amount under subsection (a) with respect to such company.]

(d) COORDINATION WITH FOREIGN PERSONAL HOLDING COMPANY PROVISIONS.—If, but for this subsection, and amount would be included in the gross income of a United States shareholder for any taxable year both under subsection (a)(1)(A)(i) and under section 551(b) (relating to foreign personal holding company income included in gross income of United States shareholder), such amount shall be included in the gross income of such shareholder only under subsection (a)(1)(A).

* * * * * * * *

SEC. 953. INCOME FROM INSURANCE OF UNITED STATES RISKS.

(a) GENERAL RULE.—For purposes of section 952(A)(1), the term "income derived from the insurance of United States risks" means that income which—

(1) is attributable to the reinsurance or the issuing of any insurance or annuity contract—

(A) in connection with property in, or liability arising out of activity in, or in connection with the lives or health of residents of, the United States, or

(B) in connection with risks not included in subparagraph (A) as the result of any arrangement whereby another corporation receives a substantially equal amount of premiums or other consideration in respect to any reinsurance or the issuing of any insurance or annuity contract in connection with property in, or liability arising out of activity in, or in connection with the lives or health of residents of, the United States, and

(2) would (subject to the modifications provided by paragraphs (1)[, (2), and (3)] *and (2)* of subsection (b)) be taxed under subchapter L of this chapter if such income were the income of a domestic insurance corporation.

This section shall apply only in the case of a controlled foreign corporation which receives, during any taxable year, premiums or other consideration in respect of the reinsurance, and the issuing, of insurance and annuity contracts described in paragraph (1) in excess of 5 percent of the total of premiums and other consideration received during such taxable year in respect of all reinsurance and issuing of insurance and annuity contracts.

(b) SPECIAL RULE.—For purposes of subsection (a)—

[(1) In the application of part I of subchapter L, life insurance company taxable income is the gain from operations as defined in section 809(b).]

[(2)] *(1)* A corporation which would, if it were a domestic insurance corporation, be taxable under part II of subchapter L shall apply subsection (a) as if it were taxable under part III of subchapter L.

[(3) The following provisions of subchapter L shall not apply:

[(A) Section 809(d)(4) (operations loss deduction).

[(B) Section 809(d)(5) (certain nonparticipating contracts).

[(C) Section 809(d)(6) (group life, accident, and health insurance).

[(D) Section 809(d)(10) (small business deduction).

[(E) Section 817(b) (gain on property held on December 31, 1958, and certain substituted property acquired after 1958).

[(F) Section 832(c)(5) (certain capital losses).]

(2) The following provisions of subchapter L shall not apply:

(A) The special life insurance company deduction and the small life insurance company deduction.

(B) Section 805(a)(5) (relating to operations loss deduction).

(C) Section 832(c)(5) (relating to certain capital losses).

[(4)]*(3)* The items referred to in—

(A) section [809(c)(1)] *803(a)(1)* (relating to gross amount of premiums and other considerations),

(B) section [809(c)(2)] *803(a)(2)* (relating to net decrease in reserves),

(C) section [809(d)(2)] *805(a)(2)* (relating to net increase on reserves), and

(D) section 832(b)(4) (relating to premiums earned on insurance contracts),

shall be taken into account only to the extent they are in respect of any reinsurance or the issuing of any insurance or annuity contract described in subsection (a)(1).

[(5)]*(4)* All items of income, expenses, losses, and deductions (other than those taken into account under paragraph [(4)]*(3)* shall be properly allocated or apportioned under regulations prescribed by the Secretary.

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SEC. 954. FOREIGN BASE COMPANY INCOME.

(a) Foreign Base Company Income.—* * *

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(h) Foreign Base Company Oil Related Income.—For purposes of this section—

(1) In general.—Except as otherwise provided in this subsection, the term "foreign base company oil related income" means foreign oil related income (within the meaning of [section 907(c)(2))] *paragraphs (2) and (3) of section 907(c)*) other than income derived from a source within a foreign country in connection with—

(A) oil or gas which was extracted from an oil or gas well located in such foreign country, or

(B) oil, gas, or a primary product of oil or gas which is sold by the foreign corporation or a related person for use or consumption within such country or is loaded in such country on a vessel or aircraft as fuel for such vessel or aircraft.

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SEC. 959. EXCLUSION FROM GROSS INCOME OF PREVIOUSLY TAXED EARNINGS AND PROFITS.

(a) Exclusion From Gross Income of United States Persons.—For purposes of this chapter, the earnings and profits for a taxable year of foreign corporation attributable to amounts which are, or have been, included in the gross income of a United States shareholder under section 951(a) shall not, when—

(1) such amounts are distributed to, or

(2) such amounts would, but for this subsection, be included under section 951(a)(1)(B) in the gross income of,

such shareholder (or any other United States person who acquires from any person any portion of the interest of such United States shareholder in such foreign corporation, but only to the extent of such portion, and subject to such proof of the identity of such interest as the Secretary may by regulations prescribe) directly, or indirectly through a chain of ownership described under section 958(a), be again included in the gross income of such United States shareholder (or of such other United States person).

(b) Exclusion From Gross Income of Certain Foreign Subsidiaries.—For purposes of section 951(a), the earnings and profits for a taxable year of a controlled foreign corporation attributable to amounts which are, or have been, included in the gross income of a United States shareholder under section 951(a), shall not, when distributed through a chain of ownership described under section 958(a), be also included in the gross income of another controlled foreign corporation in such chain for purposes of the application of section 951(a) to such other controlled foreign corporation with respect to such United States shareholder (or to any other United States shareholder who acquires from any person any portion of the interest of such United States shareholder in the controlled foreign corporation, but only to the extent of such portion, and subject to such proof of identity of such interest as the Secretary may prescribe by regulations).

(c) Allocation of Distributions.—For purposes of subsections (a) and (b), section 316(a) shall be applied by applying paragraph (2) thereof, and then paragraph (1) thereof—

(1) first to earnings and profits attributable to amounts included in gross income under section 951(a)(1)(B) (or which would have been included except for subsection (a)(2) of this section),

(2) then to earnings and profits attributable to amounts included in gross income under section 951(a)(1)(A) (but reduced by amounts not included under section 951(a)(1)(B) because of the exclusion in subsection (a)(2) of this section), and

(3) then to other earnings and profits.

(d) Distributions Excluded From Gross Income Not To Be Treated as Dividends.—Except as provided in section 960(a)(3), any distribution excluded from gross income under subsection (a) shall be treated, for purposes of this chapter, as a distribution which is not a dividend.

(e) Coordination With Amounts Previously Taxed Under Section 1248.—For purposes of this section and section 960(b), any amount included in the gross income of any person as a dividend by reason of subsection (a) or (f) of section 1248 shall be treated as an amount included in the gross income of such person under section 951(a)(1)(A).

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Subpart I—Admissibility of Documentation Maintained in Foreign Countries

Sec. 982. Admissibility of documentation maintained in foreign countries.

SEC. 982. ADMISSIBILITY OF DOCUMENTATION MAINTAINED IN FOREIGN COUNTRIES.

(a) General Rule.—* * *

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(d) Definitions and Special Rules.—For purposes of this section—

(1) Foreign-based documentation.—The term "foreign-based documentation" means any documentation which is outside the United States and which may be relevent or material to the tax treatment of the examined item.

(2) Documentation.—The term "documentation" includes books and records.

[(3) Foreign-connected.—An item shall be treated as foreign connected if—

[(A) such item is directly or indirectly from a source outside the United States, or

[(B) such item (in whole or in part)—

[(i) purports to arise outside the United States, or [(ii) is otherwise dependent on transactions occurring outside the United States.]

[(4)] *(3)* AUTHORITY TO EXTEND 90-DAY PERIOD.—The Secretary, and any court having jurisdiction over a proceeding under subsection (c)(2), may extend the 90-day period referred to in subsection (a).

Subchapter O—Gain or Loss on Disposition of Property

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PART I—DETERMINATION OF AMOUNT OF AND RECOGNITION OF GAIN OR LOSS

Sec. 1001. Determination of amount of and recognition of gain or loss.
Sec. 1002. Recognition of gain or loss [repealed].

SEC. 1001. DETERMINATION OF AMOUNT OF AND RECOGNITION OF GAIN OR LOSS.

(a) * * *

* * * * * * *

(e) CERTAIN TERM INTERESTS.—

* * * * * * *

(1) IN GENERAL.—In determining gain or loss from the sale or other disposition of a term interest in property, that portion of the adjusted basis of such interest which is determined pursuant to section [1014 or 1015] *1014, 1015, or 1041* (to the extent that such adjusted basis is a portion of the entire adjusted basis of the property) shall be disregarded.

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PART II—BASIS RULES OF GENERAL APPLICATION

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SEC. 1015. BASIS OF PROPERTY ACQUIRED BY GIFTS AND TRANSFERS IN TRUST.

(a) GIFTS AFTER DECEMBER 31, 1920.—* * *

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(e) GIFTS BETWEEN SPOUSES.—In the case of any property acquired by gift in a transfer described in section 1041(a), the basis of such property in the hands of the transferee shall be determined under section 1041(b) and not this section.

SEC. 1016. ADJUSTMENTS TO BASIS.

(a) GENERAL RULE.—Proper adjustment in respect of the property shall in all cases be made—

(1) * * *

* * * * * * *

(17) in the case of any evidence of indebtedness referred to in section [818]*811*(b) (relating to amortization of premium and accrual of discount in the case of life insurance companies), to

the extent of the adjustments required under section [818]*811*(b) (or the corresponding provisions of prior income tax laws) for the taxable year and all prior taxable years;

* * * * * * *

(21) to the extent provided in section [44C(e),] *23(e),* in the case of property with respect to which a credit has been allowed under section [44C] *23*;

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PART III—COMMON NONTAXABLE EXCHANGES

Sec. 1031. Exchange of property held for productive use or investment.
Sec. 1032. Exchange of stock for property.
Sec. 1033. Involuntary conversions.
Sec. 1034. Rollover of gain on sale of principal residence.
Sec. 1035. Certain exchanges of insurance policies.
Sec. 1036. Stock for stock of same corporation.
Sec. 1037. Certain exchanges of United States obligations.
Sec. 1038. Certain reacquisitions of real property.
Sec. 1039. Certain sales of low-income housing projects.
Sec. 1040. Transfer of certain farm, etc., real property.
Sec. 1041. Transfers of property between spouses or incident to divorce.

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SEC. 1033. INVOLUNTARY CONVERSIONS.

(a) GENERAL RULE.—* * *

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(g) CONDEMNATION OF REAL PROPERTY HELD FOR PRODUCTIVE USE IN TRADE OR BUSINESS OR FOR INVESTMENT.—

(1) SPECIAL RULE.—For purposes of subsection (a), if real property (not including stock in trade or other property held primarily for sale) held for productive use in trade or business or for investment is (as the result of its seizure, requisition, or condemnation, or threat or imminence thereof) compulsorily or involuntarily converted, property of a like kind to be held either for productive use in trade or business or for investment shall be treated as property similar or related in service or use to the property so converted.

(2) LIMITATION.—Paragraph (1) shall not apply to the purchase of stock in the acquisition of control of a corporation described in subsection (a)(2)(A).

(3) ELECTION TO TREAT OUTDOOR ADVERTISING DISPLAYS AS REAL PROPERTY.—

(A) IN GENERAL.—A taxpayer may elect, at such time and in such manner as the Secretary may prescribe, to treat property which constitutes an outdoor advertising display as real property for purposes of this chapter. The election provided by this subparagraph may not be made with respect to any property with respect to which [the credit allowed by section 38 (relating to investment in certain depreciable property)] *the investment credit determined under section 46(a) is or has been claimed or with respect to which an election under section 179(a) (relating to* *election to expense certain depreciable business assets) is in effect.*

* * * * * * *

SEC. 1035. CERTAIN EXCHANGES OF INSURANCE POLICIES.

(a) General Rules.—No gain or loss shall be recognized on the exchange of—

(1) a contract of life insurance for another contract of life insurance or for an endowment or annuity contract; or

(2) a contract of endowment insurance (A) for another contract of endowment insurance which provides for regular payments beginning at a date not later than the date payments would have begun under the contract exchanged, or (B) for an annuity contract; or

(3) an annuity contract for an annuity contract.

(b) Definitions.—For the purpose of this section—

(1) Endowment contract.—A contract of endowment insurance is a contract with a life insurance company as defined in section **[**801**]** *816* which depends in part on the life expectancy of the insured, but which may be payable in full in a single payment during his life.

(2) Annuity contract.—An annuity contract is a contract to which paragraph (1) applies but which may be payable during the life of the annuitant only in installments.

(3) Life insurance contract.—A contract of life insurance is a contract to which paragraph (1) applies but which is not ordinarily payable in full during the life of the insured.

* * * * * * *

SEC. 1041. TRANSFERS OF PROPERTY BETWEEN SPOUSES OR INCIDENT TO DIVORCE.

(a) General Rule.—No gain or loss shall be recognized on a transfer of property from an individual to (or in trust for the benefit of)—

(1) a spouse, or

(2) a former spouse, but only if the transfer is incident to the divorce.

(b) Transfer Treated as Gift; Transferee Has Transferor's Basis.—In the case of any transfer of property described in subsection (a)—

(1) for purposes of this subtitile, the property shall be treated as acquired by the transferee by gift, and

(2) the basis of the transferee in the property shall be the adjusted basis of the transferor.

(c) Incident to Divorce.—For purposes of subsection (a)(2), a transfer of property is incident to the divorce if such transfer—

(1) occurs within 1 year after the date on which the marriage ceases, or

(2) is related to the cessation of the marriage.

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PART VII—WASH SALES; STRADDLES

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SEC. 1092. STRADDLES.

(a) Recognition of Loss in Case of Straddles, Etc.—* * *

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(d) Definitions and Special Rules.—For purposes of this section—

(1) Personal property.—The term "personal property" means any personal property (other than stock) of a type which is actively traded. *Such term also includes any offsetting position stock.*

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(6) Offsetting position stock.—The term "offsetting position stock" means any stock of a corporation formed or availed of to take positions in personal property which offset positions taken by shareholders.

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Subchapter P—Capital Gains and Losses

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PART I—TREATMENT OF CAPITAL GAINS

Sec. 1201. Alternative tax.
Sec. 1202. Deduction for capital gains.

SEC. 1201. ALTERNATIVE TAX FOR CORPORATIONS.

(a) Corporations.—* * *

* * * * * * *

(b) Cross References.—

For computation of the alternative tax—

(1) in the case of life insurance companies, see section **[**802**]** *801*(a)(2);

(2) in the case of regulated investment companies and their shareholders, see section 852(b)(3) (A) and (D); and

(3) in the case of real estate investment trusts, see section 857(b)(3)(A).

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PART IV—SPECIAL RULES FOR DETERMINING CAPITAL GAINS AND LOSSES

Sec. 1231. Property used in the trade or business and involuntary conversions.
Sec. 1232. Bonds and other evidences of indebtedness.
Sec. 1232A Original issue discount.
Sec. 1232B. Tax treatment of stripped bonds.
Sec. 1233. Gains and losses from short sales.34. Options to buy or sell.
Sec. 1234. Options to buy or sell.
Sec. 1234A Gains or losses from certain terminations.
Sec. 1235. Sale or exchange of patents.
Sec. 1236. Dealers in securities.
Sec. 1237. Real property subdivided for sale.
Sec. 1238. Amortization in excess of depreciation.
Sec. 1239. Gain from sale of depreciable property between certain related taxpayers.
Sec. 1241. Cancellation of lease or distributor's agreement.

Sec. 1242. Losses on small business investment company stock.
Sec. 1243. Loss of small business investment company.
Sec. 1244. Losses on small business stock.
Sec. 1245. Gain from dispositions of certain depreciable property.
Sec. 1246. Gain on foreign investment stock.
Sec. 1247. Election of foreign investment companies to distribute income currently.
Sec. 1248. Gain from certain sales or exchanges of stock in certain foreign corporations.
Sec. 1249. Gain from certain sales of exchange of patents, etc., to foreign corporations.
Sec. 1250. Gain from dispositions of certain depreciable realty.
[Sec. 1251. Gain from dispositions of property used in farming where farm losses offset nonfarm income.]
Sec. 1252. Gain from dispositions of farm land.
Sec. 1253. Transfers of franchises, trademarks, and trade names.
Sec. 1254. Gain from dispositions of interest in oil, gas, or geothermal property.
Sec. 1255. Gain from dispositions of section 126 property.
Sec. 1256. Regulated futures contracts marked to market.
Sec. 1257. Capital gain treatment for portion of gain on sale of condominium units coverted from existing structures.

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SEC. 1232A. ORIGINAL ISSUE DISCOUNT.

(a) Original Issue Discount on Bonds Issued After July 1, 1982, Included in Income on Basis of Constant Interest Rate.—* * *

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(c) Definitions and Special Rules.—

(1) Bond includes other evidences of indebtedness.—For purposes of this section, the term "bond" means a bond, debenture, note, or certificate or other evidence of indebtedness.

(2) Purchase defined.—For purposes of this section, the term "purchase" means any acquisition of a bond, but only if the basis of the bond is not determined in whole or in part by reference to the adjusted basis of such bond in the hands of the person from whom acquired, or under section 1014(a) (relating to property acquired from a decedent).

(3) Original issue discount, etc.—For purposes of this section, the terms "original issue discount", "issue price", and "date or original issue" shall have the respective meanings given to such terms by section 1232(b).

(4) Exceptions.—This section shall not apply to any holder—

(A) who has purchased the bond at a premium, or

(B) which is a life insurance company to which section [818]*811* (b) applies.

(5) Basis adjustments.—The basis of any bond in the hands of the holder thereof shall be increased by the amount included in his gross income pursuant to this section.

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SEC. 1235. SALE OR EXCHANGE OF PATENTS.

(a) General.—A transfer (other than by gift, inheritance, or devise) of property consisting of all substantial rights to a patent, or an undivided interest therein which includes a part of all such rights, by any holder shall be considered the sale or exchange of a capital asset held for more than 1 year, regardless of whether or not payments in consideration of such transfer are—

(1) payable periodically over a period generally coterminous with the transferee's use of the patent, or

(2) contingent on the productivity, use, or disposition of the property transferred.

(b) "HOLDER" DEFINED.—For purposes of this section, the term "holder" means—

(1) any individual whose efforts created such property, or

(2) any other individual who has acquired his interest in such property in exchange for consideration in money or money's worth paid to such creator prior to actual reduction to practice of the invention covered by the patent, if such individual is neither—

(A) the employer of such creator, nor

(B) related to such creator (within the meaning of subsection (d)).

(c) EFFECTIVE DATE.—This section shall be applicable with regard to any amounts received, or payments made, pursuant to a transfer described in subsection (a) in any taxable year to which this subtitle applies, regardless of the taxable year in which such transfer occurred.

(d) RELATED PERSONS.—Subsection (a) shall not apply to any transfer, directly or indirectly, between persons specified within any one of the paragraphs of section 267(b) *or persons described in section 707(b)*; except that, in applying section 267(b) and (c) *and section 707(b)* for purposes of this section—

(1) the phrase "25 percent or more" shall be substituted for the phrase "more than 50 percent" each place it appears in section 267(b) *or 707(b)*, and

(2) paragraph (4) of section 267(c) shall be treated as providing that the family of an individual shall include only his spouse, ancestors, and lineal descendants.

* * * * * * *

SEC. 1239. GAIN FROM SALE OF DEPRECIABLE PROPERTY BETWEEN CERTAIN RELATED TAXPAYERS.

(a) TREATMENT OF GAIN AS ORDINARY INCOME.—In the case of a sale or exchange of property, directly or indirectly, between related persons, any gain recognized to the transferor shall be treated as ordinary income if such property is, in the hands of the transferee, of a character which is subject to the allowance for depreciation provided in section 167.

[(b) RELATED PERSONS.—For purposes of subsection (a), the term "related persons" means—

[(1) a husband and wife, and

[(2) a person and all entities which are 80-percent owned entities with respect to such person.]

(b) RELATED PERSON.—For purposes of subsection (a), the term "related person" means a person and all entities which are 80 percent-owned entities with respect to such person.

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SEC. 1244. LOSSES ON SMALL BUSINESS STOCK.

(a) GENERAL RULE.—* * *

* * * * * * *

(c) SECTION 1244 STOCK DEFINED.—

(1) IN GENERAL.—For purposes of this section, the term "section 1244 stock" means [common] stock in a domestic corporation if—

(A) at the time such stock is issued, such corporation was a small business corporation,

(B) such stock was issued by such corporation for money or other property (other than stock and securities), and

(C) such corporation, during the period of its 5 most recent taxable years ending before the date the loss on such stock was sustained, derived more than 50 percent of its aggregate gross receipts from sources other than royalties, rents dividends, interest, annuities, and sales or exchanges of stocks or securities.

* * * * * * *

(d) SPECIAL RULES.—

(1) LIMITATIONS ON AMOUNT OF ORDINARY LOSS.—

(A) CONTRIBUTIONS OF PROPERTY HAVING BASIS IN EXCESS OF VALUE.—If—

(i) section 1244 stock was issued in exchange for property,

(ii) the basis of such stock in the hands of the taxpayer is determined by reference to the basis in his hands of such property, and

(iii) the adjusted basis (for determining loss) of such property immediately before the exchange exceeded its fair market value at such time,

then in computing the amount of the loss on such stock for purposes of this section the basis of such stock shall be reduced by an amount equal to the excess described in clause (iii).

(B) INCREASES IN BASIS.—In computing the amount of the loss on stock for purposes of this section, any increase in the basis of such stock (through contributions to the capital of the corporation, or otherwise) shall be treated as allocable to stock which is not section 1244 stock.

(2) RECAPITALIZATIONS, CHANGES IN NAME, ETC.—To the extent provided in regulations prescribed by the Secretary, [common] stock in a corporation, the basis of which (in the hands of a taxpayer) is determined in whole or in part by reference to the basis in his hands of stock in such corporation which meets the requirements of subsection (c)(1) (other than subparagraph (C) thereof), or which is received in a reorganization described in section 368(a)(1)(F) in exchange for stock which meets such requirements, shall be treated as meeting such requirements. For purposes of paragraphs (1)(C) and (3)(A) of subsection (c), a successor corporation in a reorganization described in section 368(a)(1)(F) shall be treated as the same corporation as its predecessor.

(3) Relationship to net operating loss deduction.—For purposes of section 172 (relating to the net operating loss deduction), any amount of loss treated by reason of this section as an ordinary loss shall be treated as attributable to a trade or business of the taxpayer.

(4) Individual defined.—For purposes of this section, the term "individual" does not include a trust or estate.

* * * * * * *

SEC. 1246. GAIN OR FOREIGN INVESTMENT COMPANY STOCK.

(a) Treatment of Gain as Ordinary Income.—* * *

(b) Definition of Foreign Investment Company.—For purposes of this section, the term "foreign investment company" means any foreign corporation which, for any taxable year beginning after December 31, 1962, is—

(1) registered under the Investment Company Act of 1940, as amended (15 U.S.C. 80a-1 to 80b-2), either as a management company or as a unit investment trust, or

[(2) engaged (or holding itself out as being engaged) primarily in the business of investing, reinvesting, or trading in securities (within the meaning of section 3(a)(1) of such Act, as limited by paragraphs (2) through (10) (except paragraph (6)(C)) and paragraphs (12) through (15) of section 3(c) of such Act) at a time when more than 50 percent of the total combined voting power of all classes of stock entitled to vote, or of the total value of shares of all classes of stock, was held, directly or indirectly (within the meaning of section 958(a)), by United States persons (as defined in section 7701(a)(30)).]

(2) engaged (or holding itself out as being engaged) primarily in the business of investing, reinvesting, or trading in—

(A) securities (as defined in section 2(a)(36) of the Investment Company Act of 1940, as amended),

(B) commodities, or

(C) any interest (including a futures or forward contract or option) in property described in subparagraph (A) or (B),

at a time when 50 percent or more of the total combined voting power of all classes of stock entitled to vote, or the total value of all classes of stock, was held directly (or indirectly through applying paragraphs (2) and (3) of section 958(a) and paragraph (4) of section 318(a)) by United States persons (as defined in section 7701(a)(3)).

* * * * * * *

SEC. 1248. GAIN FROM CERTAIN SALES OR EXCHANGES OF STOCK IN CERTAIN FOREIGN CORPORATIONS.

(a) General Rule.—* * *

* * * * * * *

(c) Determination of Earnings and Profits.—

(1) In general.—Except as provided in section 312(k)(4), for purposes of this section the earnings and profits of any foreign corporation for any taxable year shall be determined according to rules substantially similar to those applicable to domestic corporations, under regulations prescribed by the Secretary.

EARNINGS AND PROFITS OF SUBSIDIARIES OF FOREIGN CORPORATIONS.—If—

(A) subsection (a) or (f) applies to a sale, exchange, or distribution by a United States person of stock of a foreign corporation and, by reason of the ownership of the stock sold or exchanged, such person owned within the meaning of section 958(a)(2) stock of any other foreign corporation; and

(B) such person owned, within the meaning of section 958(a), or was considered as owning by applying the rules of ownership of section 958(b), 10 percent or more of the total combined voting power of all classes of stock entitled to vote of such other foreign corporation at any time during the 5-year period ending on the date of the sale or exchange when such other foreign corporation was a controlled foreign corporation (as defined in section 957),

then, for purposes of this section, the earnings and profits of the foreign corporation the stock of which is sold or exchanged which are attributable to the stock sold or exchanged shall be deemed to include the earnings and profits of such other foreign corporation which—

(C) are attributable (under regulations prescribed by the Secretary) to the stock of such other foreign corporation which such person owned within the meaning of section 958(a)(2) (by reason of his ownership within the meaning of section 958(a)(1)(A) of the stock sold or exchanged) on the date of such sale or exchange (or on the date of any sale or exchange of the stock of such other foreign corporation occurring during the 5-year period ending on the date of the sale or exchange of the stock of such foreign corporation, to the extent not otherwise taken into account under this section but not in excess of the fair market value of the stock of such other foreign corporation sold or exchanged over the basis of such stock (for determining gain) in the hands of the transferor); and

(D) were accumulated in taxable years of such other corporation beginning after December 31, 1962, and during the period or periods—

(i) such other corporation was a controlled foreign corporation, and

(ii) such person owned within the meaning of section 958(a)[(2)] the stock of such other foreign corporation.

* * * * * * *

(i) Cross Reference—

For provision excluding amounts previously taxed under this section from gross income when subsequently distributed, see section 959(e).

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SEC. 1250. GAIN FROM DISPOSITIONS OF CERTAIN DEPRECIABLE REALTY.

(a) General Rule.—Except as otherwise provided in this section—

(1) Additional depreciation after December 31, 1975.— * * *

* * * * * * *

(4) Cross reference—

For reduction in the case of corporations on capital gain treatment under this section, see section 291(a)(1).

[SEC. 1251. GAIN FROM DISPOSITION OF PROPERTY USED IN FARMING WHERE FARM LOSSES OFFSET NONFARM INCOME.

[(a) Circumstances Under Which Section Applies.—This section shall apply with respect to any taxable year only if—

[(1) there is a farm net loss for the taxable year, or

[(2) there is a balance in the excess deductions account as of the close of the taxable year after applying subsection (b)(3)(A).

[(b) Excess Deductions Account.—

[(1) Requirement.—Each taxpayer subject to this section shall, for purposes of this section, establish and maintain an excess deductions account.

[(2) Additional to account.—

[(A) General rule.—There shall be added to the excess deductions account for each taxable year an amount equal to the farm net loss.

[(B) Exceptions.—In the case of an individual (other than a trust) and, except as provided in this subparagraph, in the case of an S corporation, subparagraph (A) shall apply for a taxable year—

[(i) only if the taxpayer's nonfarm adjusted gross income for such year exceeds $50,000, and

[(ii) only to the extent the taxpayer's farm net loss for such year exceeds $25,000.

This subparagraph shall not apply to an S corporation for a taxable year if on any day of such year a shareholder of such corporation is an individual who, for his taxable year with which or within which the taxable year of the corporation ends, has a farm net loss or is a shareholder of another S corporation which has a farm net loss for its taxable year ending within such taxable year of the individual. For purposes of clause (i), in the case of an S corporation the nonfarm adjusted gross income of the corporation shall be increased by the amount of the nonfarm adjusted gross income of that shareholder (on any day of the corporation's taxable year) who has the highest amount of all such shareholders of nonfarm adjusted gross income for his taxable year with which or within the taxable year of the corporation ends.

[(C) Married individuals.—In the case of a husband or wife who files a separate return, the amount specified in subparagraph (B)(i) shall be $25,000 in lieu of $50,000, and in subparagraph (B)(ii) shall be $12,500 in lieu of $25,000. This subparagraph shall not apply if the spouse of the taxpayer does not have any nonfarm adjusted gross income for the taxable year.

[(D) Nonfarm adjusted gross income.—For purposes of this section, the term "nonfarm adjusted gross income" means adjusted gross income (taxable income, in the case of an S corporation) computed without regard to income or deductions attributable to the business of farming.

[(E) Termination of additions.—No amount shall be added to the excess deductions account for any taxable year beginning after December 31, 1975.

[(3) Subtractions from account.—If there is any amount in the excess deductions account at the close of any taxable year (determined before any amount is subtracted under this paragraph for such year) there shall be subtracted from the account—

[(A) an amount equal to the farm net income for such year, plus the amount (determined as provided in regulations prescribed by the Secretary) necessary to adjust the account for deductions which did not result in a reduction of the taxpayer's tax under this subtitle for the taxable year or any preceding taxable year, and

[(B) after applying paragraph (2) or subparagraph (A) of this paragraph (as the case may be), an amount equal to the sum of the amounts treated, solely by reason of the application of subsection (c), as ordinary income.

In the case of a corporation which has made or received a transfer described in clause (ii) of paragraph (5)(A), subtractions from the excess deductions account shall be determined, in such manner as the Secretary shall prescribe, applying this paragraph to the farm net income, and the amounts described in subparagraph (B), of the transferor corporation and the transferee corporation on an aggregate basis.

[(4) Exception for taxpayers using certain accounting methods.—

[(A) General rule.—Except to the extent that the taxpayer has succeeded to an excess deductions account as provided in paragraph (5), additions to the excess deductions account shall not be required by a taxpayer who elects to compute taxable income from farming (i) by using inventories, and (ii) by charging to capital account all expenditures paid or incurred which are properly chargeable to capital account (including such expenditures which the taxpayer may, under this chapter or regulations prescribed thereunder, otherwise treat or elect to treat as expenditures which are not chargeable to capital account).

[(B) Time, manner, and effect of election.—An election under subparagraph (A) for any taxable year shall be filed within the time prescribed by law (including extensions thereof) for filing the return for such taxable year, and shall be made and filed in such manner as the Secretary shall prescribe by regulations. Such election shall be binding on the taxpayer for such taxable year and for all subsequent taxable years and may not be revoked except with the consent of the Secretary.

[(C) Change of method of accounting, etc.—If, in order to comply with the election made under subparagraph (A), a taxpayer changes his method of accounting in computing taxable income from the business of farming, such change shall be treated as having been made with the consent of the Secretary and for purposes of section 481(a)(2) shall be treated as a change not initiated by the taxpayer.

[(5) Transfer of account.—

[(A) Certain corporate transactions.—

[(i) In the case of a transfer described in subsection (d)(3) to which section 371(a), 374(a), or 381 applies, the acquiring corporation shall succeed to and take into account as of the close of the day of distribution or transfer, the excess deductions account of the transferor.

[(ii) In the case of a transfer which is described in subsection (d)(3), which is in connection with a reorganization described in section 368(a)(1)(D), and which is not described in clause (i), the transferee corporation shall be deemed to have an excess deductions account in an amount equal to the amount in the excess deductions account of the transferor. The transferor's excess deductions account shall not be reduced by reason of the preceding sentence.

[(B) Certain gifts.—If—

[(i) farm recapture property is disposed of by gift, and

[(ii) the potential gain (as defined in subsection (e)(5)) on farm recapture property disposed of by gifts during any one-year period in which any such gift occurs is more than 25 percent of the potential gain on farm recapture property held by the donor immediately prior to the first of such gifts,

each donee of the property shall succeed (at the time the first of such gifts is made, but in an amount determined as of the close of the donor's taxable year in which the first of such gifts is made) to the same proportion of the donor's excess deductions account (determined, after the application of paragraphs (2) and (3) with respect to the donor, as of the close of such taxable year), as the potential gain on the property received by such donee bears to the aggregate potential gain on farm recapture property held by the donor immediately prior to the first of such gifts.

[(6) Joint return.—In the case of an addition to an excess deductions account for a taxable year for which a joint return was filed under section 6013, for any subsequent taxable year for which a separate return was filed the Secretary shall provide rules for allocating any remaining amount of such addition in a manner consistent with the purposes of this section.

[(c) Ordinary Income.—

[(1) General rule.—Except as otherwise provided in this section, if farm recapture property (as defined in subsection (e)(1)) is disposed of during a taxable year beginning after December 31, 1969, the amount by which—

[(A) in the case of a sale, exchange, or involuntary conversion, the amount realized, or

[(B) in the case of any other disposition, the fair market value of such property,

exceeds the adjusted basis of such property shall be treated as ordinary income. Such gain shall be recognized notwithstanding any other provision of this subtitle.

[(2) Limitation.—

[(A) Amount in excess deductions account.—The aggregate of the amounts treated under paragraph (1) as ordinary income for any taxable year shall not exceed the amount in the excess deductions account at the close of the taxable year after applying subsection (b)(3)(A).

[(B) Dispositions taken into account.—If the aggregate of the amounts to which paragraph (1) applies is limited by the application of subparagraph (A), paragraph (1) shall apply in respect of such dispositions (and in such amounts) as provided under regulations prescribed by the Secretary.

[(C) Special rule for dispositions of land.—In applying subparagraph (A), any gain on the sale or exchange of land shall be taken into account only to the extent of its potential gain (as defined in subsection (e)(5)).

[(d) Exceptions and Special Rules.—

[(1) Gifts.—Subsection (c) shall not apply to a disposition by gift.

[(2) Transfer at death.—Except as provided in section 691 (relating to income in respect of a decedent), subsection (c) shall not apply to a transfer at death.

[(3) Certain corporate transactions.—If the basis of property in the hands of a transferee is determined by reference to its basis in the hands of the transferor by reason of the application of section 332, 351, 361, 371(a), or 374(a), then the amount of gain taken into account by the transferor under subsection (c)(1) shall not exceed the amount of gain recognized to the transferor on the transfer of such property (determined without regard to this section). This paragraph shall not apply to a disposition to an organization (other than a cooperative described in section 521) which is exempt from the tax imposed by this chapter.

[(4) Like kind exchanges; involuntary conversion, etc.—If property is disposed of and gain (determined without regard to this section) is not recognized in whole or in part under section 1031 or 1033, then the amount of gain taken into account by the transferor under subsection (c)(1) shall not exceed the sum of—

[(A) the amount of gain recognized on such disposition (determined without regard to this section), plus

[(B) the fair market value of property acquired with respect to which no gain is recognized under subparagraph (A), but which is not farm recapture property.

[(5) Partnerships.—

[(A) In general.—In the case of a partnership, each partner shall take into account separately his distributive share of the partnership's farm net losses, gains from dispositions of farm recapture property, and other items in applying this section to the partner.

[(B) Transfers to partnerships.—If farm recapture property is contributed to a partnership and gain (determined without regard to this section) is not recognized under section 721, then the amount of gain taken into account by the transferor under subsection (c)(1) shall not exceed the excess of the fair market value of farm recapture property transferred over the fair market value of the partnership interest attributable to such property. If the partnership agreement provides for an allocation of gain to the contributing partner with respect to farm recapture property contributed to the partnership (as provided in section 704(c)(2)), the partnership interest of the contributing partner shall be deemed to be attributable to such property.

[(6) Property transferred to controlled corporations.—Except for transactions described in subsection (b)(5)(A), in the case of a transfer, described in paragraph (3), of farm recapture property to a corporation, stock or securities received by a transferor in the exchange shall be farm recapture property to the extent attributable to the fair market value of farm recapture property (or, in the case of land, if less, the adjusted basis plus the potential gain (as defined in subsection (e)(5)) on farm recapture property) contributed to the corporation by such transferor.

[(e) Definitions.—For purposes of this section—

[(1) Farm recapture property.—The term "farm recapture property" means—

[(A) any property (other than section 1250 property) described in paragraph (1) (relating to business property held for more than 1 year), (3) (relating to livestock), or (4) (relating to an unharvested crop) of section 1231(b) which is or has been used in the trade or business of farming by the taxpayer or by a transferor in a transaction described in subsection (b)(5), and

[(B) any property the basis of which in the hands of the taxpayer is determined with reference to the adjusted basis of property which was farm recapture property in the hands of the taxpayer within the meaning of subparagraph (A).

[(2) Farm net loss.—The term "farm net loss" means the amount by which—

[(A) the deductions allowed or allowable by this chapter which are directly connected with the carrying on of the trade or business of farming, exceed

[(B) the gross income derived from such trade or business.

Gains and losses on the disposition of farm recapture property referred to in section 1231(a) (determined without regard to this section or section 1245(a)) shall not be taken into account.

[(3) Farm net income.—The term "farm net income" means the amount by which the amount referred to in paragraph (2)(B) exceeds the amount referred to in paragraph (2)(A).

[(4) Trade or business of farming.—

[(A) Horse racing.—In the case of a taxpayer engaged in the raising of horses, the term "trade or business of farming" includes the racing of horses.

[(B) Several businesses of farming.—If a taxpayer is engaged in more than one trade or business of farming, all such trades and businesses shall be treated as one trade or business.

[(5) Potential gain.—The term "potential gain" means an amount equal to the excess of the fair market value of property over its adjusted basis, but limited in the case of land to the extent of the deductions allowable in respect to such land under sections 175 (relating to soil and water conservation expenditures) and 182 (relating to expenditures by farmers for clearing land) for the taxable year and the 4 preceding taxable years.]

SEC. 1252. GAIN FROM DISPOSITION OF FARM LAND.

(a) General Rule.—

(1) Ordinary income.—Except as otherwise provided in this section, if farm land which the taxpayer has held for less than 10 years is disposed of during a taxable year beginning after December 31, 1969, the lower of—

(A) the applicable percentage of the aggregate of the deductions allowed under sections 175 (relating to soil and water conservation expenditures) and 182 (relating to expenditures by farmers for clearing land) for expenditures made by the taxpayer after December 31, 1969, with respect to the farm land or

(B) the excess of—

(i) the amount realized (in the case of a sale, exchange, or involuntary conversion), or the fair market value of the farm land (in the case of any other disposition), over

(ii) the adjusted basis of such land,

shall be treated as ordinary income. Such gain shall be recognized notwithstanding any other provision of this subtitle[, except that this section shall not apply to the extent section 1251 applies to such gain].

(2) Farm land.—For purposes of this section, the term "farm land" means any land with respect to which deductions have been allowed under section 175 (relating to soil and water conservation expenditures) or 182 (relating to expenditures by farmers for clearing land).

(3) Applicable percentage.—For purposes of this section—

If the farm land is disposed of—	The applicable percentage is—
Within 5 years after the date it was acquired	100 percent.
Within the sixth year after it was acquired	80 percent.
Within the seventh year after it was acquired	60 percent.
Within the eighth year after it was acquired	40 percent.
Within the ninth year after it was acquired	20 percent.
10 or more years after it was acquired	0 percent.

(b) Special Rules.—Under regulations prescribed by the Secretary, rules similar to the rules of section 1245 shall be applied for purposes of this section.

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SEC. 1256. REGULATED FUTURES CONTRACTS MARKED TO MARKET

(a) General Rule.—* * *

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(g) Foreign Currency Contract Defines.—

(1) Foreign currency contract.—For purposes of this section, the term "foreign currency contract" means a contract—

(A) which requires delivery of a foreign currency which is a currency in which positions are also traded through regulated futures contracts *(or the settlement of which depends on the value of such a currency),*

(B) which is traded in the interbank market, and

(C) which is entered into at arm's length at a price determined by reference to the price in the interbank market.

(2) Regulations.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of paragraph (1), including regulations excluding from the application of paragraph (1) any contract (or type of contract) if its application thereto would be inconsistent with such purposes.

* * * * * * *

SEC. 1257. CAPITAL GAIN TREATMENT FOR PORTION OF GAIN ON SALE OF CONDOMINIUM UNITS CONVERTED FROM EXISTING STRUCTURES.

(a) General Rule.—For purposes of this title, any gain recognized by the taxpayer on the sale or exchange of any qualified condominium unit shall be treated as gain from the sale of property used in the trade or business (as defined in section 1231(b)) to the extent that the gain so recognized does not exceed such unit's allocable capital gain amount.

(b) Qualified Condominium Unit.—For purposes of this section—

(1) In general.—The term "qualified condominium unit" means any condominium unit resulting from the conversion of qualified real property into condominium units.

(2) Qualified real property.—The term "qualified real property" means any real property—

(A) which consists of one or more structures (and the land necessary for the use of the structures) used in a trade or business of the taxpayer at all times during the 5-year period ending on the determination date, and

(B) with respect to which the taxpayer makes an election under this section.

(3) SPECIAL RULE WHERE PROPERTY ACQUIRED BY INHERITANCE OR DEVISE, ETC.—For purposes of this subsection, the taxpayer shall be treated as holding any property and as using such property in his trade or business during any period during which such property was held and so used—

(A) in the case of property acquired by inheritance or devise, by the decedent, or

(B) by any other person if the basis of such property in the hands of the taxpayer is determined (in whole or in part) by reference to the basis of such property in the hands of such other person.

(c) ALLOCABLE CAPITAL GAIN AMOUNT.—For purposes of this section—

(1) IN GENERAL.—The term "allocable capital gain amount" means, with respect to any qualified condominium unit, the portion of the imputed capital gain determined under paragraph (2) with respect to the qualified real property which is allocated to such unit under paragraph (3).

(2) IMPUTED CAPITAL GAIN.—The term "imputed capital gain" means, with respect to any qualified real property, the amount of the gain (if any) which—

(A) would have resulted had such property been sold on the determination date for an amount equal to its fair market value on such date, and

(B) would have not been treated as ordinary income under section 1245 or 1250.

(3) ALLOCATION AMONG UNITS.—The amount of the imputed capital gain shall be allocated among condominium units in proportion to their respective fair market values on the determination date.

(4) FAIR MARKET VALUE DETERMINATIONS.—For purposes of paragraphs (2) and (3), the fair market value (and adjusted basis) of any qualified real property (and of any condominium unit) shall be determined without regard to any improvement made in anticipation of the conversions into condominium units.

(5) DETERMINATION DATE.—The term "determination date" means, with respect to any qualified real property, the earliest of—

(A) the day on which the taxpayer adopted a plan to convert such property into condominium units,

(B) the day on which substantial improvements were first made to such property in anticipation of the conversion into condominium units, or

(C) the day on which the form of ownership of such property is changed into condominium units.

(d) SPECIAL RULES.—

(1) ELECTION.—An election under subsection (a) shall be made at such time and in such manner as the Secretary shall by regulations prescribe. Such as election, once made, may be revoked only with the consent of the Secretary.

(2) SPECIAL RULE FOR CARRYOVER BASIS TRANSACTIONS.—If any taxpayer makes an election under this section with respect to any qualified real property, the same tax treatment which

would apply to the taxpayer shall also apply to any other person whose basis in such property is determined (in whole or in part) by reference to the basis of such property in the hands of the taxpayer.

(3) SPECIAL RULE WHERE SUBSTANTIAL VALUATION OVERSTATEMENTS.—

(A) IN GENERAL.—If the percentage determined by dividing—

(i) the amount claimed for purposes of subsection (c) as the value of any qualified real property on the determination date, by

(ii) the amount determined to be the correct value of such property on such date for purposes of subsection (c),

exceeds 115 percent, for purposes of this section, the amount of the imputed capital gain shall be reduced by the amount determined under subparagraph (B).

(B) AMOUNT OF REDUCTION.—The amount of the reduction determined under this subparagraph is an amount equal to—

(i) 20 percent of the amount which (but for this paragraph) would be the imputed capital gain,

(ii) for each full percentage point by which the percentage determined under subparagraph (A) exceeds 115 percent.

Subchapter Q—Readjustment of Tax Between Years and Special Limitations

* * * * * * *

PART VII—RECOVERIES OF FOREIGN EXPROPRIATION LOSSES

* * * * * * *

SEC. 1351. TREATMENT OF RECOVERIES OF FOREIGN EXPROPRIATION LOSSES.

(a) ELECTION.—

(1) IN GENERAL.—This section shall apply only to a recovery, by a domestic corporation subject to the tax imposed by section 11 or [802,] *801;* of a foreign expropriation loss sustained by such corporation and only if such corporation was subject to that tax imposed by section 11 or [802,] *801;* as the case may be, for the year of the loss and elects to have the provisions of this section apply with respect to such loss.

(2) TIME, MANNER, AND SCOPE.—An election under paragraph (1) shall be made at such time and in such manner as the Secretary may prescribe by regulations. An election made with respect to any foreign expropriation loss shall apply to all recoveries in respect of such loss.

* * * * * * *

(c) Amount of Recovery.—

(1) General Rule.—The amount of any recovery of a foreign expropriation loss is the amount of money and the fair market value of other property received in respect of such loss, determined as of the date of receipt.

(2) Special rule for life insurance companies.—The amount of any recovery of a foreign expropriation loss includes, in the case of a life insurance company, the amount of decrease of any item taken into account under section [810] *807*(c), to the extent such decrease is attributable to the release, by reason of such loss, of its liabilities with respect to such item.

* * * * * * *

(i) Adjustments for Succeeding Years.—For purposes of this subtitle, proper adjustment shall be made, under regulations prescribed by the Secretary, in—

(1) the credit under section [33] *27* (relating to foreign tax credit),

(2) the credit under section 38 (relating to [investment] *general business* credit),

(3) the net operating loss deduction under section 172, or the operations loss deduction under section [812,] *810,*

(4) the capital loss carryover under section 1212(a), and

(5) such other items as may be specified by such regulations,

for the taxable year of a recovery of a foreign expropriation loss to which this section applies, and for succeeding taxable years, to take into account items changed in making the computations under subsection (d) for taxable years prior to the taxable year of such recovery.

Subchapter S—Tax Treatment of S Corporations and Their Shareholders

* * * * * * *

PART I—IN GENERAL

* * * * * * *

SEC. 1361. S CORPORATION DEFINED.

(a) S Corporation Defined.—* * *

* * * * * * *

(c) Special Rules for Applying Subsection (b).—

(1) Husband and wife treated as 1 shareholder.—For purposes of subsection (b)(1)(A), a husband and wife (and their estates) shall be treated as 1 shareholder.

(2) Certain trusts permitted as shareholders.—

(A) In general.—For purposes of subsection (b)(1)(B), the following trusts may be shareholders:

(i) A trust all of which is treated (under subpart E of part I of subchapter J of this chapter) as owned by an individual who is a citizen or resident of the United States.

(ii) A trust which was described in clause (i) immediately before the death of the deemed owner and which continues in existence after such death, but only for the 60-day period beginning on the day of the deemed owner's death. If a trust is described in the preceding sentence and if the entire corpus of the trust is includible in the gross estate of the deemed owner, the preceding sentence shall be applied by substituting "2-year period" for "60-day period".

(iii) A trust with respect to stock transferred to it pursuant to the terms of a will, but only for the 60-day period beginning on the day on which such stock is transferred to it.

(iv) A trust created primarily to exercise the voting power of stock transferred to it.

This subparagraph shall not apply to any foreign trust.

(B) TREATMENT AS SHAREHOLDERS.—For purposes of subsection (b)(1)—

(i) In the case of a trust described in clause (i) of subparagraph (A), the deemed owner shall be treated as the shareholder.

(ii) In the case of a trust described in clause (ii) of subparagraph (A), the estate of the deemed owner shall be treated as the shareholder.

(iii) In the case of a trust described in clause (iii) of subparagraph (A), the estate of the testator shall be treated as the shareholder.

(iv) In the case of a trust described in clause (iv) of subparagraph (A), each beneficiary of the trust shall be treated as a shareholder.

(3) ESTATE OF INDIVIDUAL IN BANKRUPTCY MAY BE SHAREHOLDER.—For purposes of subsection (b)(1)(B), the term "estate" includes the estate of an individual in a case under title 11 of the United States Code.

(4) DIFFERENCES IN COMMON STOCK VOTING RIGHTS DISREGARDED.—For purposes of subsection (b)(1)(D), a corporation shall not be treated as having more than 1 class of stock solely because there are differences in voting rights among the shares of common stock.

(5) STRAIGHT DEBT SAFE HARBOR.—

(A) IN GENERAL.—For purposes of subsection (b)(1)(D), straight debt shall not be treated as a second class of stock.

(B) STRAIGHT DEBT DEFINED.—For purposes of this paragraph, the term "straight debt" means any written unconditional promise to pay on demand or on a specified date a sum certain in money if—

(i) the interest rate (and interest payment dates) are not contingent on profits, the borrower's discretion, or similar factors,

(ii) there is no convertibility (directly or indirectly) into stock, and

(iii) the creditor is an individual (other than a nonresident alien), an estate, or a trust described in paragraph (2).

(C) Regulations.—The Secretary shall prescribe such regulations as may be necessary or appropriate to provide for the proper treatment of straight debt under this subchapter and for the coordination of such treatment with other provisions of this title.

[(6) Ownership of stock in certain inactive corporations.—For purposes of subsection (b)(2)(A), a corporation shall not be treated as a member of an affiliated group at any time during any taxable year by reason of the ownership of stock in another corporation if such other corporation—

[(A) has not begun business at any time on or after the date of its incorporation and before the close of such taxable year, and

[(B) does not have taxable income for the period included within such taxable year.]

(6) Ownership of stock in certain inactive corporations.—For purposes of subsection (b)(2)(A), a corporation shall not be treated as a member of an affiliated group during any period within a taxable year by reason of the ownership of stock in another corporation if such other corporation—

(A) has not begun business at any time on or before the close of such period, and

(B) does not have gross income for such period.

(d) Special Rule for Qualified Subchapter S Trust.—

(1) In general.—In the case of a qualified subchapter S trust with respect to which a beneficiary makes an election under paragraph (2)—

(A) such trust shall be treated as a trust described in subsection (c)(2)(A)(i), and

(B) for purposes of section 678(a), the beneficiary of such trust shall be treated as the owner of that portion of the trust which consists of stock in an S corporation with respect to which the election under paragraph (2) is made.

(2) Election.—

(A) In general.—A beneficiary of a qualified subchapter S trust (or his legal representative) may elect to have this subsection apply.

(B) Manner and time of election.—

(i) Separate election with respect to each [S] corporation.—An election under this paragraph hall be made separately with respect to each [S] corporation the stock of which is held by the trust.

(ii) Elections with respect to successive income beneficiaries.—If there is an election under this paragraph with respect to any beneficiary, an election under this paragraph shall be treated as made by each successive beneficiary unless such beneficiary affirmatively refuses to consent to such election.

(iii) Time, manner, and form of election.—Any election, or refusal, under this paragraph shall be made in such manner and form, and at such time, as the Secretary may prescribe.

(C) Election irrevocable.—An election under this paragraph, once made, may be revoked only with the consent of the Secretary.

(D) Grace period.—An election under this paragraph shall be effective up to [60] *75* days before the date of the election.

[(3) Qualified subchapter S trust.—For purposes of this subsection, the term "qualified subchapter S trust" means a trust—

[(A) which owns stock in 1 or more S corporations,

[(B) all of the income (within the meaning of section 643(b)) of which is distributed (or required to be distributed) currently to 1 individual who is a citizen or resident of the United States, and

[(C) the terms of which require that—

[(i) during the life of the current income beneficiary there shall be only 1 income beneficiary of the trust,

[(ii) any corpus distributed during the life of the current income beneficiary may be distributed only to such beneficiary,

[(iii) the income interest of the current income beneficiary in the trust shall terminate on the earlier of such beneficiary's death or the termination of the trust, and

[(iv) upon the termination of the trust during the life of the current income beneficiary, the trust shall distribute all of its assets to such beneficiary.

[(4) Trust ceasing to be qualified.—If a qualified subchapter S trust ceases to meet any requirement under paragraph (3), the provisions of this subsection shall not apply to such trust as of the date it ceases to meet such requirements.]

(3) Qualified subchapter S trust.—For purposes of this subsection, the term "qualified subchapter S trust" means a trust—

(A) the terms of which require that—

(i) during the life of the current income beneficiary, there shall be only 1 income beneficiary of the trust,

(ii) any corpus distributed during the life of the current income beneficiary may be distributed only to such beneficiary,

(iii) the income interest of the current income beneficiary in the trust shall terminate on the earlier of such beneficiary's death or the termination of the trust, and

(iv) upon the termination of the trust during the life of the current income beneficiary, the trust shall distribute all of its assets to such beneficiary, and

(B) all of the income (within the meaning of section 643(b)) of which is distributed (or required to be distributed) currently to 1 individual who is a citizen or resident of the United States.

(4) Trust ceasing to be qualified.—

(A) Failure to meet requirements of paragraph (3)(A).—If a qualified subchapter S trust ceases to meet any

requirement of paragraph (3)(A), the provisions of this subsection shall not apply to such trust as of the date it ceases to meet such requirement.

(B) FAILURE TO MEET REQUIREMENTS OF PARAGRAPH (3)(B).—If any qualified subchapter S trust ceases to meet any requirement of paragraph (3)(B) but continues to meet the requirements of paragraph (3)(A), the provisions of this subsection shall not apply to such trust as of the first day of the first taxable year beginning after the first taxable year for which it failed to meet the requirements of paragraph (3)(B).

SEC. 1362. ELECTION; REVOCATION; TERMINATION.

(a) ELECTION.—

(1) IN GENERAL.—Except as provided in subsection (g), a small business corporation may elect, in accordance with the provisions of this section, to be an S corpration.

(2) ALL SHAREHOLDERS MUST CONSENT TO ELECTION.—An election under this subsection shall be valid only if all persons who are shareholders in such corporation on the day on which such election is made consent to such election.

(b) WHEN MADE.—

(1) IN GENERAL.—An election under subsection (a) may be made by a small business corporation for any taxable year—

(A) at any time during the preceding taxable year, or

(B) at any time during the taxable year and on or before the 15th day of the 3d month of the taxable year.

(2) CERTAIN ELECTIONS MADE DURING 1ST 2½ MONTHS TREATED AS MADE FOR NEXT TAXABLE YEAR.—If—

(A) an election under subsection (a) is made for any taxable year during such year and on or before the 15th day of the 3d month of such year, but

(B) either—

(i) on 1 or more days in such taxable year before the day on which the election was made the corporation did not meet the requirements of subsection (b) of section 1361, or

(ii) 1 or more of the persons who held stock in the corporation during such taxable year and before the election was made did not consent to the election,

then such election shall be treated as made for the following taxable year.

(3) ELECTION MADE AFTER 1ST 2½ MONTHS TREATED AS MADE FOR FOLLOWING TAXABLE YEAR.—If—

(A) a small business corporation makes an electrion under subsection (a) for any taxable year, and

(B) such election is made after the 15th day of the 3d month of the taxable year and on or before the last day of such taxable year,

then such election shall be treated as made for the following taxable year.

(4) TAXABLE YEARS OF 2½ MONTHS OR LESS.—For purposes of this subsection, an election for a taxable year made not later

than 2 months and 15 days after the first day of the taxable year shall be treated as timely made during such year.

* * * * * * *

(e) Treatment of S Termination Year.—

(1) In general.—In the case of an S termination year, for purposes of this title—

(A) S short year.—The portion of such year ending before the 1st day for which the termination is effective shall be treated as a short taxable year for which the corporation is an S corporation.

(B) C short year.—The portion of such year beginning on such 1st day shall be treated as a short taxable year for which the corporation is a C corporation.

(2) Pro rata allocation.—Except as provided in [paragraph (3),] paragraphs (3) and (6)(C), the determination of which items are to be taken into account for each of the short taxable years referred to in paragraph (1) shall be made—

(A) first by determining for the S termination year—

(i) the amount of each of the items of income, loss, deduction, or credit described in section 1366(a)(1)(A), and

(ii) the amount of the nonseparately computed income or loss, and

(B) then by assigning an equal portion of each amount determined under subparagraph (A) to each day of the S termination year.

(3) Election to have items assigned to each short taxable year under normal tax accounting rules.—

(A) In general.—A corporation may elect to have paragraph (2) not apply.

[(B) All shareholders must consent to election.—An election under this paragraph shall be valid only if all persons who are shareholders in the corporation at any time during the S termination year consent to such election.]

(B) Shareholders must consent to election.—An election under this subsection shall be valid only if all persons who are shareholders in the corporation at any time during the S short year and all persons who are shareholders in the corporation on the first day of the C short year consent to such election.

(4) S termination year.—For purposes of this subsection, the term "S termination year" means any taxable year of a corporation (determined without regard to this subsection) in which a termination of an election made under subsection (a) takes effect (other than on the 1st day thereof).

(5) Tax for C short year determined on annualized basis.—

(A) In general.—The taxable income for the short year described in subparagraph (B) of paragraph (1) shall be placed on an annual basis by multiplying the taxable income for such short year by the number of days in the S termination year and by dividing the result by the number of days in the short year. The tax shall be the same part of the tax computed on the annual basis as the number of days in such short year is of the number of days in the S termination year.

(B) SECTION 443(d)(2) TO APPLY.—Subsection (d)(2) of section 443 shall apply to the short taxable year described in subparagraph (B) of paragraph (1).

(6) OTHER SPECIAL RULES.—For purposes of this title—

(A) SHORT YEARS TREATED AS 1 YEAR FOR CARRYOVER PURPOSES.—The short taxable year described in subparagraph (A) of paragraph (1) shall not be taken into account for purposes of determining the number of taxable years to which any item may be carried back or carried forward by the corporation.

(B) DUE DATE FOR S YEAR.—The due date for filing the return for short taxable year described in subparagraph (A) of paragraph (1) shall be the same as the due date for filing the return for the short taxable year described in subparagraph (B) of paragraph (1) (including extensions thereof).

(C) PARAGRAPH (2) NOT TO APPLY TO ITEMS RESULTING FROM SECTION 338.—Paragraph (2) shall not apply with respect to any item resulting from the application of section 338.

* * * * * * *

SEC. 1363. EFFECT OF ELECTION ON CORPORATION.

(a) GENERAL RULE.—Except as otherwise provided in this subchapter and in section 58(d), and S corporation shall not be subject to the taxes imposed by this chapter.

(b) COMPUTATION OF CORPORATION'S TAXABLE INCOME.—The taxable income of S corporation shall be computed in the same manner as in the case of an individual, except that—

(1) the items described in section 1366(a)(1)(A) shall be separately stated,

(2) the deductions referred to in section 703(a)(2) shall not be allowed to the corporation, and

(3) section 248 shall apply.

(c) ELECTIONS OF THE S CORPORATION.—

(1) IN GENERAL.—Except as provided in paragraph (2), any election affecting the computation of items derived from an S corporation shall be made by the corporation.

(2) EXCEPTIONS.—In the case of an S corporation, elections under the following provisions shall be made by each shareholder separately—

[(A) subsection (b)(5) or (d)(4) of section 108 (relating to income from discharge of indebtedness),]

[(B)] *(A)* section 163(d) (relating to limitation on interest on investment indebtedness),

[(C)] *(B)* section 617 (relating to deduction and recapture of certain mining exploration expenditures, and

[(D)] *(C)* section 901 (relating to taxes of foreign countries and possessions of the United States).

(d) DISTRIBUTIONS OF APPRECIATED PROPERTY.—[If] *Except as provided in subsection (e), if—*

(1) and S corporation makes a distribution of property (other than an obligation of such corporation) with respect to its stock, and

(2) the fair market value of such property exceeds its adjusted basis in the hands of the S corporation,

then, notwithstanding any other provision of this subtitle, gain shall be recognized to the S corporation on the distribution in the same manner as if it had sold such property to the distributee at its fair market value.

(e) SUBSECTION (d) NOT TO APPLY TO COMPLETE LIQUIDATIONS AND REORGANIZATIONS.—Subsection (d) shall not apply to any distribution—

(1) of property in complete liquidation of the corporation, or

(2) to the extent it consists of property permitted by section 354, 355, or 356 to be received without the recognition of gain.

PART II—TAX TREATMENT OF SHAREHOLDERS

* * * * * * * *

SEC. 1366. PASS-THRU OF ITEMS TO SHAREHOLDERS.

(a) DETERMINATION OF SHAREHOLDER'S TAX LIABILITY.—

(1) IN GENERAL.—In determining the tax under this chapter of a shareholder for the shareholder's taxabler year in which the taxable year of the S corporation ends (or for the final taxable year of a shareholder who dies before the end of the corporation's taxable year), there shall be taken into account the shareholder's pro rata share of the corporation's—

(A) items of income (including tax-exempt income), loss, deduction, or credit the separate treatment of which could affect the liability for tax of any shareholder, and

(B) nonseparately computed income or loss.

For purposes of the preceding sentence, the items referred to in subparagraph (A) shall include amounts described in paragraph (4) or (6) of section 702(a).

(2) NONSEPARATELY COMPUTED INCOME OR LOSS DEFINED.—For purposes of this subchapter, the term "nonseparately computed income or loss" means gross income minus the deductions allowed to the corporation under this chapter, determined by excluding all items described in paragraph (1)(A).

(b) CHARACTER PASSED THRU.—The character of any item included in a shareholder's pro rata share under paragraph (1) of subsection (a) shall be determined as if such item were realized directly from the source from which realized by the corporation, or incurred in the same manner as incurred by the corporation.

(c) GROSS INCOME OF A SHAREHOLDER.—In any case where it is necessary to determine the gross income a shareholder for purposes of this title, such gross income shall include the shareholder's pro rata share of the gross income of the corporation.

(d) SPECIAL RULES FOR LOSSES AND DEDUCTIONS.—

(1) CANNOT EXCEED SHAREHOLDER'S BASIS IN STOCK AND DEBT.—The aggregate amount of losses and deductions taken into account by a shareholder under subsection (a) for any taxable year shall not exceed the sum of—

(A) the adjusted basis of the shareholder's stock in the S corporation (determined with regard to paragraph (1) of section 1367(a) for the taxable year), and

(B) the shareholder's adjusted basis of any indebtedness of the S corporation to the shareholder (determined without regard to any adjustment under paragraph (2) of section 1367(b) for the taxable year).

(2) INDEFINITE CARRYOVER OF DISALLOWED LOSSES AND DEDUCTIONS.—Any loss or deduction which is disallowed for any taxable year by reason of paragraph (1) shall be treated as incurred by the corporation in the succeeding taxable year with respect to that shareholder.

(3) CARRYOVER OF DISALLOWED LOSSES AND DEDUCTIONS TO POST-TERMINATION TRANSITION PERIOD.—

(A) IN GENERAL.—If for the last taxable year of a corporation for which it was an S corporation a loss or deduction was disallowed by reason of paragraph (1), such loss or deduction shall be treated as incurred by the shareholder on the last day of any post-termination transition period.

(B) CANNOT EXCEED SHAREHOLDER'S BASIS IN STOCK.—The aggregate amount of losses and deductions taken into account by a shareholder under subparagraph (A) shall not exceed the adjusted basis of the shareholder's stock in the corporation (determined at the close of the last day of the post-termination transition period and without regard to this paragraph).

(C) ADJUSTMENT IN BASIS OF STOCK.—The shareholder's basis in the stock of the corporation shall be reduced by the amount allowed as a deduction by reason of this paragraph.

(e) TREATMENT OF FAMILY GROUP.—If an individual who is a membr of the family (within the meaning of section 704(e)(3)) of one or more shareholders of an S corporation renders services for the corporation or furnishes capital to the corporation without receiving reasonable compensation therefor, the Secretary shall make such adjustments in the items taken into account by such individual and such shareholders as may be necessary in order to reflect the value of such services or capital.

(f) SPECIAL RULES.—

(1) SUBSECTION (a) NOT TO APPLY TO CREDIT ALLOWABLE UNDER SECTION [39.] *34.*—Subsection (a) shall not apply with respect to any credit allowable under section [39] *34* (relating to certain uses of gasoline[, special fuels, and lubricating oil] *and special fuels).*

(2) REDUCTION IN PASS-THRU FOR TAX IMPOSED ON CAPITAL GAIN.—If any tax is imposed under section 56 or 1374 for any taxable year on an S corporation, for purposes of subsection (a)—

(A) the amount of the corporation's long-term capital gains for the taxable year shall be reduced by the amount of such tax, and

(B) if the amount of such tax exceeds the amount of such long-term capital gains, the corporation's gains from sales or exchanges of property described in section 1231 shall be reduced by the amount of such excess.

For purposes of the preceding sentence, the term "long-term capital gain" shall not include any gain from the sale or exchange of property described in section 1231.

(3) REDUCTION IN PASS-THRU FOR TAX IMPOSED ON EXCESS NET PASSIVE INCOME.—If any tax is imposed under section 1375 for any taxable year on an S corporation, for purposes of subsection (a), each item of passive investment income shall be reduced by an amount which bears the same ratio to the amount of such tax as—

(A) the amount of such item, bears to

(B) the total passive investment income for the taxable year.

(g) CROSS REFERENCE.—

For rules relating to procedures for determining the tax treatment of subchapter S items, see subchapter D of chapter 63.

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SEC. 1367. ADJUSTMENTS TO BASIS OF STOCK OF SHAREHOLDERS, ETC.

(a) GENERAL RULE.—

(1) INCREASES IN BASIS.—The basis of each shareholder's stock in an S corporation shall be increased for any period by the sum of the following items determined with respect to that shareholder for such period:

(A) the items of income described in subparagraph (A) of section 1366(a)(1),

(B) any nonseparately computed income determined under subparagraph (B) of section 1366(a)(1), and

(C) the excess of the deductions for depletion over the basis of the property subject to depletion.

(2) DECREASES IN BASIS.—The basis of each shareholder's stock in an S corporation shall be decreased for any period (but not below zero) by the sum of the following items determined with respect to the shareholder for such period:

(A) distributions by the corporation which were not includible in the income of the shareholder by reason of section 1368,

(B) the items of loss and deduction described in subparagraph (A) of section 1366(a)(1),

(C) any nonseparately computed loss determined under subparagraph (B) of section 1366(a)(1),

(D) any expense of the corporation not deductible in computing its taxable income and not properly chargeable to capital account, and

(E) the amount of the shareholder's deduction for depletion under section 611 with respect to oil and gas wells.

(b) SPECIAL RULES.—

(1) INCOME ITEMS.—An amount which is required to be included in the gross income of a shareholder and shown on his return shall be taken into account under subparagraph (A) or (B) of subsection (a)(1) only to the extent such amount is included in the shareholder's gross income on his return, in-

creased or decreased by any adjustment of such amount in a redetermination of the shareholder's tax liability.

(2) ADJUSTMENTS IN BASIS OF INDEBTEDNESS.—

(A) REDUCTION OF BASIS.—If for any taxable year the amounts specified in subparagraphs (B), (C), (D), and (E) of subsection (a)(2) exceed the amount which reduces the shareholder's basis to zero, such excess shall be applied to reduce (but not below zero) the shareholder's basis in any indebtedness of the S corporation to the shareholder.

(B) RESTORATION OF BASIS.—If for any taxable year there is a reduction under subparagraph (A) in the shareholder's basis in the indebtedness of an S corporation to a shareholder, any net increase (after the application of paragraphs (1) and (2) of subsection (a)) for any subsequent taxable year shall be applied to restore such reduction in basis before any of it may be used to increase the shareholder's basis in the stock of the S corporation.

[(3) COORDINATION WITH SECTION 165(g).—This section and section 1366 shall be applied before the application of section 165(g) to any taxable year of the shareholder or the corporation in which the stock becomes worthless.]

(3) COORDINATION WITH SECTIONS 165(g) AND 166(d).—This section and section 1366 shall be applied before the application of sections 165(g) and 166(d) to any taxable year of the shareholder or the corporation in which the security or debt becomes worthless.

PART III—SPECIAL RULES

* * * * * * *

SEC. 1371. COORDINATION WITH SUBCHAPTER C.

(a) APPLICATION OF SUBCHAPTER C RULES.—

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(c) EARNINGS AND PROFITS.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3) *and subsection (d)(3),* no adjustment shall be made to the earnings and profits of an S corporation.

(2) ADJUSTMENTS FOR REDEMPTIONS, LIQUIDATIONS, REORGANIZATIONS, DIVISIVES, ETC.—In the case of any transaction involving the application of subchapter C to any S corporation, proper adjustment to any accumulated earnings and profits of the corporation shall be made.

(3) ADJUSTMENTS IN CASE OF DISTRIBUTIONS TREATED AS DIVIDENDS UNDER SECTION 1368(C)(2).—Paragraph (1) shall not apply with respect to that portion of a distribution which is treated as a dividend under section 1368(c)(2).

(d) COORDINATION WITH INVESTMENT CREDIT RECAPTURE.—

(1) NO RECAPTURE BY REASON OF ELECTION.—Any election under section 1362 shall be treated as a mere change in the form of conducting a trade or business for purposes of the second sentence of section 47(b).

(2) CORPORATION CONTINUES TO BE LIABLE.—Notwithstanding an election under section 1362, an S corporation shall continue

to be liable for any increase in tax under section 47 attributable to credits allowed for taxable years for which such corporation was not an S corporation.

(3) ADJUSTMENT TO EARNINGS AND PROFITS FOR AMOUNT OF RECAPTURE. —Paragraph (1) of subsection (c) shall not apply to any increase in tax under section 47 for which the S corporation is liable.

(e) CASH DISTRIBUTIONS DURING POST-TERMINATION TRANSITION PERIOD.—Any distribution of money by a corporation with respect to its stock during a post-termination transition period shall be applied against and reduce the adjusted basis of the stock, to the extent that the amount of the distribution does not exceed the accumulated adjustments account *(within the meaning of section 1368(e)).*

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PART III—SPECIAL RULES

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SEC. 1374. TAX IMPOSED ON CERTAIN CAPITAL GAINS.

(a) GENERAL RULE.—If for a taxable year of an S corporation—

(1) the net capital gain of such corporation exceeds $25,000 and exceeds 50 percent of its taxable income for such year, and

(2) the taxable income of such corporation for such year exceeds $25,000,

There is hereby imposed a tax (computed under subsection (b)) on the income of such corporation.

(b) AMOUNT OF TAX.—The tax imposed by subsection (a) shall be the lower of—

(1) an amount equal to the tax, determined as provided in section 1201(a), on the amount by which the net capital gain of the corporation for the taxable year exceeds $25,000, or

(2) an amount equal to the tax which would be imposed by section 11 on the taxable income of the corporation for the taxable year if the corporation were not an S corporation.

No credit shall be allowable under part IV of subchapter A of this chapter (other than under section [39] *34*) against the tax imposed by subsection (a).

(c) EXCEPTIONS.—

(1) IN GENERAL.—Subsection (a) shall not apply to an S corporation for any taxable year if the election under section 1362(a) which is in effect with respect to such corporation for such taxable year has been in effect for the 3 immediately preceding taxable years.

(2) NEW CORPORATIONS.—Subsection (a) shall not apply to an S corporation if—

(A) it (and any predecessor corporation) has been in existence for less than 4 taxable years, and

(B) an election under section 1362(a) has been in effect with respect to such corporation for each of its taxable years.

(3) **Property with substituted basis.**—If—

(A) but for paragraph (1) or (2), subsection (a) would apply for the taxable year,

(B) any long-term capital gain is attributable to property acquired by the S corporation during the period beginning 3 years before the first day of the taxable year and ending on the last day of the taxable year, and

(C) the basis of such property is determined in whole or in part by reference to the basis of any property in the hands of another corporation which was not an S corporation throughout all of the period described in subparagraph (B) before the transfer by such other corporation and during which such other corporation was in existence,

then subsection (a) shall apply for the taxable year, but the amount of the tax determined under subsection (b) shall not exceed a tax, determined as provided in section 1201(a), on the net capital gain attributable to property acquired as provided in subparagraph (B) and having a basis described in subparagraph (C).

(d) **Determination of Taxable Income.**—For purposes of this section, taxable income of the corporation shall be determined under section 63(a) without regard to—

(1) the deduction allowed by section 172 (relating to net operating loss deduction), and

(2) the deductions allowed by part VIII of subchapter B (other than the deduction allowed by section 248, relating to organization expenditures).

SEC. 1375. TAX IMPOSED WHEN PASSIVE INVESTMENT INCOME OF CORPORATION HAVING SUBCHAPTER C EARNINGS AND PROFITS EXCEEDS 25 PERCENT OF GROSS RECEIPTS.

(a) **General Rule.**—If for the taxable year an S corporation has—

(1) subchapter C earnings and profits at the close of such taxable year, and

(2) gross receipts more than 25 percent of which are passive investment income,

then there is hereby imposed a tax on the income of such corporation for such taxable year. Such tax shall be computed by multiplying the excess net passive income by the highest rate of tax specified in section 11(b).

(b) **Definitions.**—For purposes of this section—

(1) **Excess net passive income**—

(A) **In general.**—Except as provided in subparagraph (B), the term "excess net passive income" means an amount which bears the same ratio to the net passive income for the taxable year as—

(i) the amount by which the passive investment income for the taxable year exceeds 25 percent of the gross receipts for the taxable year, bears to

(ii) the passive investment income for the taxable year.

(B) **Limitation.**—The amount of the excess net passive income for any taxable year shall not exceed the corporation's taxable income for the taxable year (determined in accordance with section 1374(d)).

(2) NET PASSIVE INCOME.—The term "net passive income" means—

(A) passive investment income, reduced by

(B) the deductions allowable under this chapter which are directly connected with the production of such income (other than deductions allowable under section 172 and part VIII of subchapter B).

(3) PASSIVE INVESTMENT INCOME; ETC..—The terms "subchapter C earnings and profits", "passive investment income", and "gross receipts" shall have the same respective meanings as when used in paragraph (3) of section 1362(d).

(c) SPECIAL RULES.—

(1) DISALLOWANCE OF CREDIT.—No credit shall be allowed under part IV of subchapter A of this chapter (other than section [39] *34*) against the tax imposed by subsection (a).

(2) COORDINATION WITH SECTION 1374.—If any gain—

(A) is taken into account in determining passive income for purposes of this section, and

(B) is taken into account under section 1374,

the amount of such gain taken into account under section 1374 shall be reduced by the portion of the excess net passive income for the taxable year which is attributable (on a pro rata basis) to such gain.

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PART IV—DEFINITIONS; MISCELLANEOUS

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SEC. 1378. TAXABLE YEAR OF S CORPORATION.

(a) GENERAL RULE.—* * *

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(c) EXISTING S CORPORATION REQUIRED TO USE PERMITTED YEAR AFTER 50-PERCENT SHIFT IN OWNERSHIP.—

(1) IN GENERAL.—A corporation which is an S corporation for a taxable year which includes December 31, 1982 *(or which is an S corporation for a taxable year beginning during 1983 by reason of an election made on or before October 19, 1982),* shall not be treated as an S corporation for any subsequent taxable year beginning after the first day on which more than 50 percent of the stock is newly owned stock unless such subsequent taxable year is a permitted year.

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SEC. 1379. TRANSITIONAL RULES ON ENACTMENT.

(a) OLD ELECTIONS.—Any election made under section 1372(a) (as in effect before the enactment of the Subchapter S Revision Act of 1982) shall be treated as an election made under section 1362.

[(b) REFERENCES TO PRIOR LAW INCLUDED.—In applying this subchapter to any taxable year beginning after December 31, 1982, any reference in this subchapter to another provision of this subchapter shall, to the extent not inconsistent with the purposes of this subchapter, include a reference to the corresponding provision as in effect before the enactment of the Subchapter S Revision Act of 1982.]

(b) REFERENCES TO PRIOR LAW INCLUDED.—Any references in this title to a provision of this subchapter shall, to the extent not inconsistent with the purposes of this subchapter, include a reference to the corresponding provision as in effect before the enactment of the Subchapter S Revision Act of 1982.

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CHAPTER 2—TAX ON SELF-EMPLOYMENT INCOME

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SEC. 1402. DEFINITIONS.

(a) NET EARNINGS FROM SELF-EMPLOYMENT.—* * *

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(c) TRADE OR BUSINESS.—The term "trade or business", when used with reference to self-employment income or net earnings from self-employment, shall have the same meaning as when used in section 162 (relating to trade or business expenses), except that such term shall not include—

(1) the performance of the functions of a public office, other than the functions of a public office of a State or a political subdivision thereof with respect to fees received in any period in which the functions are performed in a position compensated solely on a fee basis and in which such functions are not covered under an agreement entered into by such State and the Secretary of [Health, Education, and Welfare] *Health and Human Services* pursuant to section 218 of the Social Security Act;

(2) the performance of service by an individual as an employee, other than—

(A) service described in section 3121(b)(14)(B) performed by an individual who has attained the age of 18,

(B) service described in section 3121(b)(16),

(C) service described in section 3121(b)(11), (12), or (15) perfromed in the United States (as defined in section 3121(e)(2)) by a citizen of the United States,

(D) service described in paragraph (4) of this subsection,

(E) service performed by an individual as an employee of a State or a political subdivision thereof in a position compensated solely on a fee basis with respect to fees received in any period in which such service is not covered under an agreement entered into by such State and the Secretary of [Health, Education, and Welfare] *Health and Human Services* pursuant to section 218 of the Social Security Act, and

(F) service described in section 3121(b)(20);

(3) the performance of service by an individual as an employee or employee representative as defined in section 3231;

(4) the performance of service by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order;

(5) the performance of service by an individual in the exercise of his profession as a Christian Science practitioner; or

(6) the performance of service by an individual during the period for which an exemption under subsection (g) is effective with respect to him.

The provisions of paragraph (4) or (5) shall not apply to service (other tham service performed by a member of a religious order who has taken a vow of poverty as a member of such order) performed by an individual unless an exemption under subsection (e) is effective with respect to him.

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(g) **Members of Certain Religious Faiths.**—

(1) **Exemption.**—Any individual may file an application (in such form and manner, and with such official, as may be prescribed by regulations under this chapter) for an exemption from the tax imposed by this chapter if he is a member of a recognized religious sect or division thereof and is an adherent of established tenets or teachings of such sect of division by reason of which he is conscientiously opposed to acceptance of the benefits of any private or public insurance which makes payments in the event of death, disability, old-age, or retirement or makes payments toward the cost of, or provides services for, medical care (including the benefits of any insurance system established by the Social Security Act). Such exemption may be granted only if the application contains or is accompanied by—

(A) such evidence of such individual's membership in, and adherence to the tenets or teachings of, the sect or division thereof as the Secretary may require for purposes of determining such individual's compliance with the preceding sentence, and

(B) his waiver of all benefits and other payments under titles II and XVIII of the Social Security Act on the basis of his wages and self-employent income as well as all such benefits and other payments to him on the basis of the wages and self-employment income of any other person,

and only if the Secretary of [Health, Education, and Welfare] *Health and Human Services* finds that—

(C) such sect or division thereof has the established tenets or teachings referred to in the preceding sentence,

(D) it is the practice, and has been for a period of time which he deems to be substantial, for members of such sect or division thereof to make provision for their dependent members which in his judgment is reasonable in view of their general level of living, and

(E) such sect or division thereof has been in existence at all times since December 31, 1950.

An exemption may not be granted to any individual if any benefit or other payment referred to in subparagraph (B) became payable (or, but for section 203 or 222(b) of the Social Security Act, would have become payable) at or before the time of the filing of such waiver.

(2) Time for filing application.—For purposes of this subsection, an application must be filed on or before the time prescribed for filing the return (including any extension thereof) for the first taxable year for which the individual has self-employment income (determined without regard to this subsection or subsection (c)(6)), except that an application filed after such date but on or before the last day of the third calendar month following the calendar month in which the taxpayer is first notified in writing by the Secretary that a timely application for an exemption from the tax imposed by this chapter has not been filed by him shall be deemed to be filed timely.

(3) Period for which exemption effective.—An exemption granted to any individual pursuant to this subsection shall apply with respect to all taxable years beginning after December 31, 1950, except that such exemption shall not apply for any taxable year—

(A) beginning (i) before the taxable year in which such individual first met the requirements of the first sentence of paragraph (1), or (ii) before the time as of which the Secretary of [Health, Education, and Welfare] *Health and Human Services* finds that the sect or division thereof of which such individual is a member met the requirements of subparagraphs (C) and (D), or

(B) ending (i) after the time such individual ceases to meet the requirements of the first sentence of paragraph (1), of (ii) after the time as of which the Secretary of [Health, Education, and Welfare] *Health and Human Services* finds that the sect of division thereof of which he is a member ceases to meet the requirements of subparagraph (C) or (D).

(4) Application by fiduciaries or survivors.—In any case where an individual who has self-employment income dies before the expiration of the time prescribed by paragraph (2) for filing an application for exemption pursuant to this subsection, such an application may be filed with respect to such individual within such time by a fiduciary acting for such individual's estate or by such individual's survivor (within the meaning of section 205(c)(1)(C) of the Social Security Act).

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SEC. 1403. MISCELLANEOUS PROVISIONS.

(a) Title of Chapter.—This chapter may be cited as the "Self-Employment Contributions Act of 1954".

(b) Cross References.—

(1) For provisions relating to returns, see section 6017.

(2) For provisions relating to collection of taxes in Virgin Islands, Guam, American Samoa, and Puerto Rico, see section 7651.

[(3) For provisions relating to declarations of estimated tax on self-employment income, see section 6015.]

CHAPTER 3—WITHHOLDING OF TAX ON NONRESIDENT ALIENS AND FOREIGN CORPORATIONS [AND TAX-FREE COVENANT BONDS]

SUBCHAPTER A. Nonresident aliens and foreign corporations.
[SUBCHAPTER B. Tax-free covenant bonds.
[SUBCHAPTER C. Applications of withholding provisions.]
SUBCHAPTER B. Application of withholding provisions.

Subchapter A—Nonresident Aliens and Foreign Corporations

* * * * * * *

SEC. 1441. WITHHOLDING OF TAX ON NONRESIDENT ALIENS.

(a) GENERAL RULE.—Except as otherwise provided in subsection (c), all persons, in whatever capacity acting (including lessees or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of the United States) having the control, receipt, custody, disposal, or payment of any of the items of income specified in subsection (b) (to the extent that any of such items constitutes gross income from sources within the United States), of any nonresident alien individual or of any foreign partnership shall ([except in the cases provided for in section 1451 and] except as otherwise provided in regulations prescribed by the Secretary under section 874) deduct and withhold from such items a tax equal to 30 percent thereof, except that in the case of any item of income specified in the second sentence of subsection (b), the tax shall be equal to 14 percent of such item.

(b) INCOME ITEMS.—The items of income referred to in subsection (a) are interest (other than original issue discount as defined in section 1232(b)), dividends, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income, gains described in section 402(a)(2), 403(a)(2), or 631 (b) or (c), amounts subject to tax under section 871(a)(1)(C), gains subject to tax under section 871(a)(1)(D), and gains on transfers described in section 1235 made on or before October 4, 1966. The items of income referred to in subsection (a) from which tax shall be deducted and withheld at the rate of 14 percent are—

(1) that portion of any scholarship or fellowship grant which is received by a nonresident alien individual who is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of section 101(a)(15) of the Immigation and Nationality Act, as amended, and which is not excluded from gross income under section 117(a)(1) solely by reason of section 117(b)(2)(B); and

(2) amounts described in subparagraphs (A), (B), (C), and (D) of section 117(a)(2) which are received by any such nonresident alien individual and which are incident to a scholarship or fellowship grant to which section 117(a)(1) applies, but only to the extent such amounts are includible in gross income.

In the case of a nonresident alien individual who is a member of a domestic partnership, the items of income referred to in subsection (a) shall be treated as referring to items specified in this subsection included in his distributive share of the income of such partnership.

(c) EXCEPTIONS.—

(1) INCOME CONNECTED WITH UNITED STATES BUSINESS.—No deduction or withholding under subsection (a) shall be required in the case of any item of income (other than compensation for personal services) which is effectively connected with the conduct of a trade or business within the United States and which is included in the gross income of the recipient under section 871(b)(2) for the taxable year.

(2) OWNER UNKNOWN.—The Secretary may authorize the tax under subsection (a) to be deducted and withheld from the interest upon any securities the owners of which are not known to the withholding agent.

(3) BONDS WITH EXTENDED MATURITY DATES.—The deduction and withholding in the case of interest on bonds, mortgages, or deeds of trust or other similar obligations of a corporation, within subsections (a), (b), and (c) of section 1451 (*as in effect before its repeal by the Tax Credit Simplification Act of 1983*) were it not for the fact that the maturity date of such obligations has been extended on or after January 1, 1934, and the liability assumed by the debtor exceeds 27½ percent of the interest, shall not exceed the rate of 27½ percent per annum.

(4) COMPENSATION OF CERTAIN ALIENS.—Under regulations prescribed by the Secretary, compensation for personal services may be exempted from deduction and withholding under subsection (a).

(5) SPECIAL ITEMS.—In the case of gains described in section 402(a)(2), 403(a)(2), or 631(b) or (c), gains subject to tax under section 871(a)(1)(D), and gains on transfers described in section 1235 made on or before October 4, 1966, the amount required to be deducted and withheld shall, if the amount of such gain is not known to the withholding agent, be such amount, not exceeding 30 percent of the amount payable, as may be necessary to assure that the tax deducted and withheld shall not be less than 30 percent of such gain.

(6) PER DIEM OF CERTAIN ALIENS.—No deduction or withholding under subsection (a) shall be required in the case of amounts of per diem for subsistence paid by the United States Government (directly or by contract) to any nonresident alien individual who is engaged in any program of training in the United States under the Mutual Security Act of 1954, as amended.

(7) CERTAIN ANNUITIES RECEIVED UNDER QUALIFIED PLANS.—No deduction or withholding under subsection (a) shall be required in the case of any amount received as an annuity if such amount is, under section 871(f), exempt from the tax imposed by section 871(a).

(8) ORIGINAL ISSUE DISCOUNT.—The Secretary may prescribe such regulations as may be necessary for the deduction and withholding of the tax on original issue discount subject to tax

under section 871(a)(1)(C) including rules for the deduction and withholding of the tax on original issue discount from payments of interest.

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SEC. 1442. WITHHOLDING OF TAX ON FOREIGN CORPORATIONS.

(a) General Rule.—In the case of foreign corporations subject to taxation under this subtitle, there shall be deducted and withheld at the source in the same manner and on the same items of income as is provided in section 1441 [or section 1451] a tax equal to 30 percent thereof [; except that, in the case of interest described in section 1451 (relating to tax-free covenant bonds), the deduction and withholding shall be at the rate specified therein]. For purposes of the preceding sentence, the references in section 1441(b) to sections 871(a)(1)(C) and (D) shall be treated as referring to sections 881(a)(3) and (4), the reference in section 1441(c)(1) to section 871(b)(2) shall be treated as referring to section 842 or section 882(a)(2), as the case may be, the reference in section 1441(c)(5) to section 871(a)(1)(D) shall be treated as referring to section section 881(a)(4), and the reference in section 1441(c)(8) to section 871(a)(1)(C) shall be treated as referring to section 881(a)(3).

(b) Exemption.—Subject to such terms and conditions as may be provided by regulations prescribed by the Secretary, subsection (a) shall not apply in the case of a foreign corporation engaged in trade or business within the United States if the Secretary determines that the requirements of subsection (a) impose an undue administrative burden and that the collection of the tax imposed by section 881 on such corporation will not be jeopardized by the exemption.

(c) Exception for Guam Corporations.—For purposes of this section, the term "foreign corporation" does not include a corporation created or organized in Guam or under the law of Guam.

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[Subchapter B—Tax-Free Covenant Bonds

[Sec. 1451. Tax-free covenant bonds.

[SEC. 1451. TAX-FREE COVENANT BONDS.

[(a) Requirement of Withholding.—In any case where bonds, mortgages, or deeds of trust, or other similar obligations of a corporation, issued before January 1, 1934, contain a contract or provision by which the obligor agrees to pay any portion of the tax imposed by this subtitle on the obligee, or to reimburse the obligee for any portion of the tax, or to pay the interest without deduction for any tax which the obligor may be required or permitted to pay thereon, or to retain therefrom under any law of the United States, the obligor shall deduct and withhold a tax equal to 2 percent (regardless of whether the liability assumed by the obligor is less than, equal to, or greater than 2 percent) of the interest on such bonds, mortgages, deeds of trust, or other obligations, whether such interest is payable annually or at shorter or longer periods, if payable to—

[(1) an individual,

[(2) a partnership, or

[(3) a foreign corporation not engaged in trade or business within the United States.

[(b) Payments to Foreigners.—Notwithstanding subsection (a), if the liability assumed by the obligor does not exceed 2 percent of the interest, then the deduction and withholding shall be at the rate of 30 percent in the case of—

[(1) a nonresident alien individual,

[(2) any partnership not engaged in trade or business within the United States and composed in whole or in part of nonresident aliens, and

[(3) a foreign corporation not engaged in trade or business within the United States.

[(c) Owner Unknown.—If the owners of such obligations are not known to the withholding agent, the Secretary may authorize such deduction and withholding to be at the rate of 2 percent, or, if the liability assumed by the obligor does not exceed 2 percent of the interest, then at the rate of 30 percent.

[(d) Benefit of Personal Exemptions.—Deduction and withholding under this section shall not be required in the case of a citizen or resident entitled to receive such interest, if he files with the withholding agent on or before February 1 a signed notice in writing claiming the benefit of the deduction for personal exemptions provided in section 151; nor in the case of a nonresident alien individual if so provided for in regulations prescribed by the Secretary under section 874.

[(c) Alien Residents of Puerto Rico.—For purposes of this section, the term "nonresident alien individual" includes an alien resident of Puerto Rico.

[(f) Income of Obligor and Obligee.—The obligor shall not be allowed a deduction for the payment of the tax imposed by this subtitle, or any other tax paid pursuant to the tax-free covenant clause, nor shall such tax be included in the gross income of the obligee.]

Subchapter [C] *B*—Application of Withholding Provisions

Sec. 1461. Liability for withheld tax.
Sec. 1462. Withheld tax as credit to recipient of income.
Sec. 1463. Tax paid by recipient of income.
Sec. 1464. Refunds and credits with respect to withheld tax.

SEC. 1461. LIABILITY FOR WITHHELD TAX.

Every person required to deduct and withhold any tax under this chapter is hereby made liable for such tax and is hereby indemnified against the claims and demands of any person for the amount of any payments made in accordance with the provisions of this chapter.

SEC. 1462. WITHHELD TAX AS CREDIT TO RECIPIENT OF INCOME.

Income on which any tax is required to be withheld at the source under this chapter shall be included in the return of the recipient of such income, but any amount of tax so withheld shall be credited against the amount of income tax as computed in such return.

SEC. 1463. TAX PAID BY RECIPIENT OF INCOME.

If any tax required under this chapter to be deducted and withheld is paid by the recipient of the income, it shall not be re-collected from the withholding agent; nor in cases in which the tax is so paid shall any penalty be imposed on or collected from the recipient of the income or the withholding agent for failure to return or pay the same, unless such failure was fraudulent and for the purpose of evading payment.

SEC. 1464. REFUNDS AND CREDITS WITH RESPECT TO WITHHELD TAX.

Where there has been an overpayment of tax under this chapter, any refund or credit made under chapter 65 shall be made to the withholding agent unless the amount of such tax was actually withheld by the withholding agent.

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CHAPTER 6—CONSOLIDATED RETURNS

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Subchapter A—Returns and Payment of Tax

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SEC. 1503. COMPUTATION AND PAYMENT OF TAX.

(a) GENERAL RULE. * * *

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(c) SPECIAL RULE FOR APPLICATION OF CERTAIN LOSSES AGAINST INCOME OF INSURANCE COMPANIES TAXED UNDER SECTION [802.] *801.*

(1) IN GENERAL.—If an election under section 1504(c)(2) is in effect for the taxable year and the consolidated taxable income of the members of the group not taxed under section [802] *801* results in a consolidated net operating loss for such taxable year, then under regulations prescribed by the Secretary, the amount of such loss which cannot be absorbed in the applicable carryback periods against the taxable income of such members not taxed under section [802] *801* shall be taken into account in determining the consolidated taxable income of the affiliated group for such taxable year to the extent of 35 percent of such loss or 35 percent of the taxable income of the members taxed under section [802] *801*, whichever is less. The unused portion of such loss shall be available as a carryover, subject to the same limitations (applicable to the sum of the loss for the carryover year and the loss (or losses) carried over to such year), in applicable carryover years. [For purposes of this subsection, in determining the taxable income of each insurance company subject to tax under section 802, section 802(b)(3) shall not be taken into account.] For taxable years ending with or within calendar year 1981, "25 percent" shall be substituted for "35 percent" each place it appears in the first sentence of this subsection. For taxable years ending with

or within calendar year 1982, "30 percent" shall be substituted for "35 percent" each place it appears in that sentence.

(2) Losses of recent nonlife affiliates.—Notwithstanding the provisions of paragraph (1), a net operating loss for a taxable year of a member of the group not taxed under section 802 shall not be taken into account in determining the taxable income of a member taxed under section 802 (either for the taxable year or as a carryover or carryback) if such taxable year precedes the sixth taxable year such members have been members of the same affiliated group (determined without regard to section 1504(b)(2)).

SEC. 1504. DEFINITIONS.

(a) Definition of "Affiliated Group".—As used in this chapter, the term "affiliated group" means one or more chains of includible corporations connected through stock ownership with a common parent corporation which is an includible corporation if—

(1) Stock possessing at least 80 percent of the voting power of all classes of stock and at least 80 percent of each class of the nonvoting stock of each of the corporations (except the common parent corporation) is owned directly by one or more of the other includible corporations; and

(2) The common parent corporation owns directly stock possessing at least 80 percent of the voting power of all classes of stock and at least 80 percent of each class of the nonvoting stock of at least one of the other includible corporations.

As used in this subsection, the term "stock" does not include nonvoting stock which is limited and preferred as to dividends, employer securities (within the meaning **[**for section 409A(l)**]** *of section 409(l)* while such securities are held under a tax credit employee stock ownership plan, or qualifying employer securities (within the meaning of section 4975(e)(8)) while such securities are held under an employee stock ownership plan which meets the requirements of section 4975(e)(7).

(b) Definition of "Includible Corporation".—As used in this chapter, the term "includible corporation" means any corporation except—

(1) Corporations exempt from taxation under section 501.

(2) Insurance companies subject to taxation under section **[**802**]** *801* or 821.

(3) Foreign corporations.

(4) Corporations with respect to which an election under section 936 (relating to possession tax credit) is in effect for the taxable year.

(5) Corporations organized under the China Trade Act, 1922 [repealed for taxable years beginning after December 31, 1977].

(6) Regulated investment companies and real estate investment trusts subject to tax under subchapter M of chapter 1.

(7) A DISC or former DISC (as defined in section 992(a)).

(c) Includible Insurance Companies.—Notwithstanding the provisions of paragraph (2) of subsection (b)—

(1) Two or more domestic insurance companies each of which is subject to tax under section **[**802**]** *801* shall be treated as

includible corporations for purposes of applying subsections (a) to such insurance companies alone.

(2)(A) If an affiliated group (determined without regard to subsection (b)(2)) includes one or more domestic insurance companies taxed under section [802] *801* or 821, the common parent of such group may elect (pursuant to regulations prescribed by the Secretary) to treat all such companies as includible corporations for purposes of applying subsection (a) except that no such company shall be so treated until it has been a member of the affiliated group for the 5 taxable years immediately preceding the taxable year for which the consolidated return is filed.

(B) If an election under this paragraph is in effect for a taxable year—

(i) section 243(b)(6) and the exception provided under section 243(b)(5) with respect to subsections (b)(2) and (c) of this section,

(ii) section 542(b)(5), and

(iii) subsection (a)(4) and (b)(2)(D) of section 1563, and the reference to section 1563(b)(2)(D) contained in section 1563(b)(3)(C),

shall not be effective for such taxable year.

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Subchapter B—Related Rules

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PART II—CERTAIN CONTROLLED CORPORATIONS

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SEC. 1561. LIMITATIONS ON CERTAIN MULTIPLE TAX BENEFITS IN THE CASE OF CERTAIN CONTROLLED CORPORATIONS.

(a) GENERAL RULE.—The component members of a controlled group of corporations on a December 31 shall, for their taxable years which include such December 31, be limited for purposes of this subtitle to—

(1) amounts in each taxable income bracket in the tax table in section 11(b) which do not aggregate more than the maximum amount in such bracket to which a corporation which is not a component member of a controlled group is entitled, and

(2) one $250,000 ($150,000 if any component member is a corporation described in section 535(c)(2)(B)) amount for purposes of computing the accumulated earnings credit under section 535(c) (2) and (3)[,].

[(3) one $25,000 amount for purposes of computing the limitation on the small business deduction of life insurance companies under sections 804(a)(3) and 809(d)(10), and

[(4) one $1,000,000 amount (adjusted as provided in section 809(f)(3)) for purposes of computing the limitation under paragraph (1) or (2) of section 809(f).]

The amounts specified in paragraph (1) shall be divided equally among the component members of such group on such December

31 unless all of such component members consent (at such time and in such manner as the Secretary shall by regulations prescribe) to an apportionment plan providing for an unequal allocation of such amounts. The amounts specified in [paragraphs (2), (3), and (4)] *paragraph (2)* shall be divided equally among the component members of such group on such December 31 unless the Secretary prescribes regulations permitting an unequal allocation of such amounts.

(b) Certain Short Taxable Years.—If a corporation has a short taxable year which does not include a December 31, and is a component member of a controlled group of corporations with respect to such taxable year, then for purposes of this subtitle—

(1) the amount in each taxable income bracket in the tax table in section 11(b), *and*

(2) the amount to be used in computing the accumulated earnings credit under section 535(c)(2) and (3),

[(3) the amount to be used in computing the limitation on the small business deduction of life insurance companies under sections 804(a)(3) and 809(d)(10), and

[(4) the amount (adjusted as provided in section 809(f)(3)) to be used in computing the limitation under paragraph (1) or (2) of section 809(f),]

of such corporation for such taxable year shall be the amount specified in subsection (a)(1) [, (2), (3), or (4)] *or (2),* as the case may be, divided by the number of corporations which are component members of such group on the last day of such taxable year. For purposes of the preceding sentence, section 1563(b) shall be applied as if such last day were substituted for December 31.

SEC. 1563. DEFINITIONS AND SPECIAL RULES.

(a) Controlled Group of Corporations.—For purposes of this part, the term "controlled group of corporations" means any group of—

(1) Parent-subsidiary controlled group.—One or more chains of corporations connected through stock ownership with a common parent corporation if—

(A) stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of stock of each of the corporations, except the common parent corporation, is owned (within the meaning of subsection (d)(1)) by one or more of the other corporations; and

(B) the common parent corporation owns (within the meaning of subsection (d)(1)) stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of stock of at least one of the other corporations, excluding, in computing such voting power or value, stock owned directly by such other corporations.

(2) Brother-sister controlled group.—Two or more corporations if 5 or fewer persons who are individuals, estates, or trusts own (within the meaning of subsection (d)(2)) stock possessing—

(A) at least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of the stock of each corporation, and

(B) more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such person only to the extent such stock ownership is identical with respect to each such corporation.

(3) Combined group.—Three or more corporations each of which is a member of a group of corporations described in paragraph (1) or (2), and one of which—

(A) is a common parent corporation included in a group of corporations described in paragraph (1), and also

(B) is included in a group of corporations described in paragraph (2).

(4) Certain insurance companies.—Two or more insurance companies subject to taxation under section [802] *801* which are members of a controlled group of corporations described in paragraph (1), (2), or (3). Such insurance companies shall be treated as a controlled group of corporations separate from any other corporations which are members of the controlled group of corporations described in paragraph (1), (2), or (3).

(b) Component Member.—

(1) General Rule.—For purposes of this part, a corporation is a component member of a controlled group of corporations on a December 31 of any taxable year (and with respect to the taxable year which includes such December 31) is such corporation—

(A) is a member of such controlled group of corporations on the December 31 included in such year and is not treated as an excluded member under paragraph (2), or

(B) is not a member of such controlled group of corporations on the December 31 included in such year but is treated as an additional member under paragraph (3).

(*2*) Excluded members.—A corporation which is a member of a controlled group of corporations on December 31 of any taxable year shall be treated as an excluded member of such group for the taxable year including such December 31 if such corporation—

(A) is a member of such group for less than one-half the number of days in such taxable year which precede such December 31,

(B) is exempt from taxation under section 501(a) (exception a corporation which is subject to tax on its unrelated business taxable income under section 511) for such taxable year,

(C) is a foreign corporation subject to tax under section 881 for such taxable year,

(D) is an insurance company subject to taxation under section [802] *801* or section 821 (other than an insurance company which is a member of a controlled group described in subsection (a)(4)), or

(E) is a franchised corporation, as defined in subsection (f)(4).

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Subtitle B—Estate and Gift Taxes

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CHAPTER 11—ESTATE TAX

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Subchapter A—Estates of Citizens or Residents

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PART III—GROSS ESTATE

* * * * * * *

SEC. 2032. ALTERNATE VALUATION.

(a) General.—The value of the gross estate may be determined, if the executor so elects, by valuing all the property included in the gross estate as follows:

(1) In the case of property distributed, sold, exchanged, or otherwise disposed of, within 6 months after the decedent's death such property shall be valued as of the date of distribution, sale, exchange, or other disposition.

(2) In the case of property not distributed, sold, exchanged, or otherwise disposed of, within 6 months after the decedent's death such property shall be valued as of the date 6 months after the decedent's death.

(3) Any interest or estate which is affected by mere lapse of time shall be included at its value as of the time of death (instead of the later date) with adjustment for any difference in its value as of the later date not due to mere lapse of time.

(b) Special Rules.—No deduction under this chapter of any item shall be allowed if allowance for such item is in effect given by the alternate valuation provided by this section. Wherever in any other subsection or section of this chapter reference is made to the value of property at the time of the decedent's death, such reference shall be deemed to refer to the value of such property used in determining the value of the gross estate. In case of an election made by the executor under this section, then—

(1) for purposes of the charitable deduction under section 2055 or 2106(a)(2), any bequest, legacy, devise, or transfer enumerated therein, and

(2) for the purpose of the marital deduction under section 2056, any interest in property passing to the surviving spouse, shall be valued as of the date of the decedent's death with adjustment for any difference in value (not due to mere lapse of

time of the occurrence or nonoccurrence of a contingency) of the property as of the date 6 months after the decedent's death (substituting, in the case of property distributed by the executor or trustee, or sold, exchanged, or otherwise disposed of, during such 6-month period, the date thereof).

(c) ELECTION MUST DECREASE GROSS ESTATE AND ESTATE TAX.—No election may be made under this section with respect to an estate unless such election will decrease—

(1) the value of the gross estate, and

(2) the amount of the tax imposed by this chapter (reduced by credits allowable against such tax).

[(c) TIME OF ELECTION.—The election provided for in this section shall be exercised by the executor on his return if filed within the time prescribed by law or before the expiration of any extension of time granted pursuant to law for the filing of the return.]

(d) Election.—

(1) IN GENERAL.—The election provided for in this section shall be made by the executor on the return of the tax imposed by this chapter. Such an election, once made, shall be irrevocable.

(2) STATUTE OF LIMITATIONS WHERE PROPERTY SOLD BEFORE ELECTION.—If

(A) an election provided for in this section is made after a disposition on any property, and

(B) the basis of such property is reduced by reason of such election,

the period for assessing any deficiency of tax attributable to such basis reduction shall not expire before the date 1 year after the date on which such election is made.

SEC. 2039. ANNUITIES.

(a) GENERAL.—The gross estate shall include the value of an annuity or other payment receivable by any beneficiary by reason of surviving the decedent under any form of contract or agreement entered into after March 3, 1931 (other than as insurance under policies on the life of the decedent), if, under such contract or agreement, an annuity or other payment was payable to the decedent, or the decedent possessed the right to receive such annuity or payment, either alone or in conjunction with another for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death.

(b) AMOUNT INCLUDIBLE.—Subsection (a) shall apply to only such part of the value of the annuity or other payment receivable under such contract or agreement as is proportionate to that part of the purchase price therefor contributed by the decedent. For purposes of this section, any contribution by the decedent's employer or former employer to the purchase price of such contract or agreement (whether or not to an employee's trust or fund forming part of a pension, annuity, retirement, bonus or profit-sharing plan) shall be considered to be contributed by the decedent if made by reason of his employment.

(c) EXEMPTION OF ANNUITIES UNDER CERTAIN TRUSTS AND PLANS.—Subject to the limitation of subsection (g), notwithstanding any other provision of this section or of any provision of law, there shall be excluded from the gross estate the value of an annuity or other payment (other than an amount described in subsection (f)) receivable by any beneficiary (other than the executor) under—

(1) An employees' trust (or under a contract purchased by an employee's trust) forming part of a pension, stock bonus, or profit-sharing plan which, at the time of the decedent's separation from employment (whether by death or otherwise), or at the time of termination of the plan if earlier, met the requirements of section 401(a);

(2) A retirement annuity contract purchased by an employer (and not by an employees' trust) pursuant to a plan which, at the time of decedent's separation from employment (by death or otherwise), or at the time of termination of the plan if earlier, was a plan described in section 403(a);

(3) A retirement annuity contract purchased for an employee by an employer which is an organization referred to in section 170(b)(1)(A)(ii) or (vi), or which is a religious organization (other than a trust), and which is exempt from tax under section 501(a); or

(4) Chapter 73 of title 10 of the United States Code.

If such amounts payable after the death of the decedent under a plan described in paragraph (1) or (2), under a contract described in paragraph (3), or under chapter 73 of title 10 of the United State Code are attributable to any extent to payments or contributions made by the decedent, no exclusion shall be allowed for that part of the value of such amounts in the proportion that the total payments or contributions made by the decedent bears to the total payments or contributions made. For purposes of this subsection, contributions or payments made by the decedent's employer or former employer under a trust or plan described in paragraph (1) or (2) shall not be considered to be contributed by the decedent, and contributions or payments made by the decedent's employer or former employer toward the purchase of an annuity contract described in paragraph (3) shall, to the extent excludable from gross income under section 403(b), not be considered to be contributed by the decedent. The subsection shall apply to all decedents dying after December 31, 1953. For purposes of this subsection, contributions or payments on behalf of the decedent while he was an employee within the meaning of section 401(c)(1) made under a trust or plan described in paragraph (1) or (2) shall, to the extent allowable as a deduction under section 404, be considered to be made by a person other than the decedent and, to the extent not so allowable, shall be considered to be made by the decedent. For purposes of this subsection, amounts payable under chapter 73 of title 10 of the United States Code are attributable to payments or contributions made by the decedent only to the extent of amounts deposited by him pursuant to section 1438 or 1452(d) of such title 10. For purposes of this subsection, any deductible employee contributions (within the meaning of paragraph (5) of section 72(o)) shall be considered as made by a person other than the decedent.

(d) Exemption of Certain Annuity Interests Created by Community Property Laws.—In the case of an employee on whose behalf contributions or payments were made by his employer or former employer under a trust or plan described in subsection (c)(1) or (2), or toward the purchase of a contract described in subsection (c)(3), which under subsection (c) are not considered as contributed by the employee, if the spouse of such employee predeceases him, then, notwithstanding the provisions of this section or of any other provision of law, there shall be excluded from the gross estate of such spouse the value of any interest of such spouse in such trust or plan or such contract, to the extent such intrest—

(1) is attributable to such contributions or payments, and

(2) arises solely by reason of such spouse's interest in community income under the community property laws of a State.

(e) Exclusion of Individual Retirement Accounts, Etc.—Subject to the limitation of subsection (g), notwithstanding any other provision of this section or of any other provision of law, there shall be excluded from the value of the gross estate the value of an annuity receivable by any beneficiary (other than the executor) under—

(1) an individual retirement account described in section 408(a), *or*

(2) an individual retirement annuity described in section 408(b)[, or].

[(3) a retirement bond described in section 409(a).]

If any payment to an account described in paragraph (1) or for an annuity described in paragraph (2) or a bond described in paragraph (3) was not allowable as a deduction under section 219 and was not a rollover contribution described in section 402(a)(5) *(without regard to section 402(a)(7)),* 403(a)(4), section 403(b)(8) (but only to the extent such contribution is attributable to a distribution from a contract described in subsection (c)(3)), [405(d)(3), 408(d)(3), or 409(b)(3)(C),] *or 408(d)(3),* the preceding sentence shall not apply to that portion of the value of the amount receivable under such account[, annuity, or bond] *or annuity* (as the case may be) which bears the same ratio to the total value of the amount so receivable as the total amount which was paid to or for such account[, annuity, or bond] *or annuity* and which was not allowable as a deduction under section 219 and was not such a rollover contribution bears to the total amount paid to or for such account[, annuity or bond] *or annuity.* For purposes of this subsection, the term "annuity" means an annuity contract or other arrangement providing for a series of substantially equal periodic payments to be made to a beneficiary (other than the executor) for his life or over a period extending for at least 36 months after the date of the decedent's death.

(f) Lump Sum Distributions.—

(1) In general.—An amount is described in this subsection if—

(A) it is a lump sum distribution described in section 402(e)(4) (determined without regard to the third sentence of section 402(e)(4)(A)), or

(B) it is an amount attributable to accumulated deductible employee contributions (as defined in section 72(o)(5)(B)) in any plan taken into account for purposes of determining whether the distribution described in subparagraph (A) qualifies as a lump sum distribution.

(2) EXCEPTION WHERE RECIPIENT ELECTS NOT TO TAKE 10-YEAR AVERAGING.—An amount described in paragraph (1) shall be treated as not described in this subsection if the recipient elects irrevocably (at such time and in such manner as the Secretary may by regulations prescribe) to treat the distribution as taxable under section 402(a) (without the application of paragraph (2) thereof), except to the extent that section 402(e)(4)(J) applies to such distribution.

(g) $100,000 LIMITATION ON EXCLUSIONS UNDER SUBSECTIONS (c) AND (e).—The aggregate amount excluded from the gross estate of any decedent under subsections (c) and (e) of this section shall not exceed $100,000.

* * * * * * *

SEC. 2043. TRANSFERS FOR INSUFFICIENT CONSIDERATION

(a) IN GENERAL.—If any one of the transfers, trusts, interests, rights, or powers enumerated and described in sections 2035 to 2038, inclusive, and section 2041 is made, created, exercised, or relinquished for a consideration in money or money's worth, but is not a bona fide sale for an adequate and full consideration in money or money's worth, there shall be included in the gross estate only the excess of the fair market value at the time of death of the property otherwise to be included on account of such transaction, over the value of the consideration received therefor by the decedent.

[(b) MARITAL RIGHTS NOT TREATED AS CONSIDERATION.—For purposes of this chapter, a relinquishment or promised relinquishment of dower or curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights in the decedent's property or estate, shall not be considered to any extent a consideration "in money or money's worth."]

(b) MARITAL RIGHTS NOT TREATED AS CONSIDERATION.—

(1) IN GENERAL.—For purposes of this chapter, a relinquishment or promised relinquishment of dower or curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights in the decedent's property or estate, shall not be considered to any extent a consideration "in money or money's worth".

(2) EXCEPTION.—For purposes of section 2053 (relating to expenses, indebtedness, and taxes), a transfer of property which satisfies the requirements of paragraph (1) of section 2516 (relating to certain property settlements) shall be considered to be made for an adequate and full consideration in money or money's worth.

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PART IV—TAXABLE ESTATE

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SEC. 2053. EXPENSES, INDEBTEDNESS, AND TAXES.

(a) GENERAL RULE.—* * *

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[(e) MARITAL RIGHTS.—

[For provisions that relinquishment of marital rights shall not be deemed a consideration "in money or money's worth," see section 2043(b).]

(e) MARITAL RIGHTS.—

For provisions treating certain relinquishments of marital rights as consideration for money or money's worth, see section 2043(b)(2).

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SEC. 2055. TRANSFERS FOR PUBLIC, CHARITABLE, AND RELIGIOUS USES.

(a) IN GENERAL.—For purposes of the tax imposed by section 2001, the value of the taxable estate shall be determined by deducting from the value of the gross estate the amount of all bequests, legacies, devises, or transfers—

(1) to or for the use of the United States, any State, any political subdivision thereof, or the District of Columbia, for exclusively public purposes;

(2) to or for the use of any corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office;

(3) to a trustee or trustees, or a fraternal society, order, or association operating under the lodge system, but only if such contributions or gifts are to be used by such trustee or trustees, or by such fraternal society, order, or association, exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, such trust, fraternal society, order, or association would not be disqualified or tax exemption under section 501(c)(3) by reason of attempting to influence legislation, and such trustee or trustees, or such fraternal society, order, or association, does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office; or

(4) to or for the use of any veterans' organization incorporated by Act of Congress, or of its departments or local chapters or posts, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

For purposes of this subsection, the complete termination before the date prescribed for the filing of the estate tax return of a power to consume, invade, or appropriate property for the benefit of an individual before such power has been exercised by reason of the death of such individual or for any other reason shall be considered and deemed to be a qualified disclaimer with the same full force and effect as though he had filed such qualified disclaimer. Rules similar to the rules of section 501(j) shall apply for purposes of paragraph (2).

* * * * * * *

(e) DISALLOWANCE OF DEDUCTIONS IN CERTAIN CASES.—

(1) No deduction shall be allowed under this section for a transfer to or for the use of an organization or trust described in section 508(d) or 4948(c)(4) subject to the conditions specified in such sections.

(2) Where an interest in property (other than an interest described in section 170(f)(3)(B)) passes or has passed from the decedent to a person, or for a use, described in subsection (a), and an interest (other than an interest which is extinguished upon the decedent's death) in the same property passes or has passed (for less than an adequate and full consideration in money or money's worth) from the decedent to a person, or for a use, not described in subsection (a), no deduction shall be allowed under this section for the interest which passes of has passed to the person, or for the use, described in subsection (a) unless—

(A) in the case of a remainder interest, such interest is in a trust which is a charitable remainder annuity trust or a charitable remainder unitrust (described in section 664) or a pooled income fund (described in section 642(c)(5)), or

(B) in the case of any other interest, such interest is in the form of a guaranteed annuity or is a fixed percentage distributed yearly of the fair market value of the property (to be determined yearly).

[(3) In the case of a will executed before December 31, 1978, or a trust created before such date, if a deduction is not allowable at the time of the decedent's death because of the failure of an interest in property which passes from the decedent to a person, or for a use, described in subsection (a), to meet the requirements of subparagraph (A) or (B) of paragraph (2) of this subsection, and if the governing instrument is amended or conformed on or before December 31, 1981, or, if later, on or before the 30th day after the date on which judicial proceedings begun on or before December 31, 1981 (which are required to amend or conform the governing instrument), become final, so that the interest is in a trust which meets the requirements of such subparagraph (A) or (B) (as the case may be), a deduction shall nevertheless be allowed. The Secretary may, by regulation, provide for the application of the provisions of this paragraph to trusts whose governing instruments are amended or conformed in accordance with this paragraph, and such regulations may provide for any adjustments in the application of the provisions of section 508 (relating to special rules with respect to section 501(c)(3) organizations), subchapter J (relating to estates, trusts, beneficiaries, and decedents), and chapter 42 (relating to private foundations), to such trusts made necessary by the application of this paragraph. If, by the due date for the filing of an estate tax return (including any extension thereof), the interest is in a charitable trust which, upon allowance of a deduction, would be described in section 4947(a)(1), or the interest passes directly to a person or for a use described in subsection (a), a deduction shall be allowed as if the governing instrument was amended or conformed under this paragraph. If the amendment or conformation of the governing instrument is made after the due date for the filing of the estate tax return (including any extension thereof), the deduction shall be allowed upon the filing of a timely claim for credit or refund (as provided for in section 6511) of an overpayment resulting from the application of this paragraph. In the case of a credit or refund as a result of an amendment or conformation made pursuant to this paragraph, no interest shall be allowed for the period prior to the expiration of the 180th day after the date on which the claim for credit or refund is filed.]

(3) REFORMATIONS TO COMPLY WITH PARAGRAPH (2).—

(A) IN GENERAL.—A deduction shall be allowed under subsection (a) in respect to any qualified reformation.

(B) QUALIFIED REFORMATION.—For purposes of this paragraph, the term "qualified reformation" means a change of a governing instrument by reformation, amendment, construction, or otherwise which changes a reformable interest into a qualified interest but only if—

(i) any difference between—

(I) the actuarial value (determined as of the date of the decedent's death) of the qualified interest, and

(II) the actuarial value (as so determined) of the reformable interest, does not exceed 5 percent of the actuarial value (as so determined) of the reformable interest,

(ii) in the case of—

(I) a charitable remainder interest, the nonremainder interest (before and after the qualified reformation) terminated at the same time, or

(II) any other interest, the reformable interest and the qualified interest are for the same period, and

(iii) such change is effective as of the date of the decedent's death.

A nonremainder interest (before reformation) for a term of years in excess of 20 years shall be treated as satisfying subclause (I) of clause (ii) if such interest (after reformation) is for term of 20 years.

(C) REFORMABLE INTERESTS.—For purposes of this paragraph—

(i) IN GENERAL. The term "reformable interest" means any interest for which a deduction would be allowable under subsection (a) at the time of the decedent's death but for paragraph (2).

(ii) BENEFICIARY'S INTEREST MUST BE FIXED.—The term "reformable interest" does not include any interest unless, before the remainder vests in possession, all payments to persons other than an organization described in subsection (a) are expressed either in specified dollar amounts or a fixed percentage of the fair

market value of the property. For purposes of determining whether all such payments are expressed as a fixed percentage of the fair market value of the property, section 664(d)(3) shall be taken into account.

(iii) SPECIAL RULE WHETHER TIMELY COMMENCEMENT OF REFORMATION.—Clause (ii) shall not apply to any interest if a judicial proceeding is commenced to change such interest into a qualified interest not later than the 90th day after—

(I) if an estate tax return is required to be filed, the last date (including extensions) for filing such return, or

(II) if not estate tax return is required to be filed, the last date (including extensions) for filing the income tax return for the 1st taxable year for which a return is required to be filed by the trust.

(iv) SPECIAL RULE FOR WILL EXECUTED BEFORE JANUARY 1, 1979, ETC.—In the case of any interest passing under a will executed before January 1, 1979, or under a trust created before such date, clause (ii) shall not apply.

(D) QUALIFIED INTEREST.—For purposes of this paragraph, the term "qualified interest" means an interest for which a deduction is allowable under subsection (a).

(E) LIMITATION.—The deduction referred to in subparagraph (A) shall not exceed the amount of the deduction which would have been allowable for the reformable interest but for paragraph (2).

(F) SPECIAL RULE WHERE INCOME BENEFICIARY DIES.—If (by reason of the death of any individual) by the due date for filing the estate tax return (including any extension thereof) a reformable interest is in a wholly charitable trust or passes directly to a person or for a use described in subsection (a), a deduction shall be allowed for such reformable interest as if it had met the requirements of paragraph (2) on the date of the decedent's death. For purposes of the preceding sentence, the term "wholly charitable trust" means a charitable trust which, upon the allowance of a deduction, would be described in section 4947(a)(1).

(G) STATUTE OF LIMITATIONS.—The period for assessing any deficiency of any tax attributable to the application of this paragraph shall not expire before the date 1 year after the date on which the Secretary is notified that such reformation has occurred.

(H) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this paragraph, including regulations providing such adjustments in the application of the provisions of section 508 (relating to special rules relating to section 501(c)(3) organizations), subchapter J (relating to estates, trusts, beneficiaries, and decedents), and chapter 42 (relating to private foundations) as may be necessary by reason of the qualified reformation.

(I) Reformations permitted in case of remainder interests in residence or form, pooled income funds, etc.—The Secretary shall prescribe regulations (consistent with the provisions of this paragraph) permitting reformations in the case of any failure—

(i) to meet the requirements of section 170(f)(3)(B) (relating to remainder interests in personal residence or farm, etc.), or

(ii) to meet the requirements of section 642(c)(5).

CHAPTER 12—GIFT TAX

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Subchapter B—Transfers

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SEC. 2517. CERTAIN ANNUITIES UNDER QUALIFIED PLANS.

(a) General Rule.—The exercise or nonexercise by an employee of an election or option whereby an annuity or other payment will become payable to any beneficiary at or after the employee's death shall not be considered a transfer for purposes of this chapter if the option or election and annuity or other payment is provided for under—

(1) an employees' trust (or under a contract purchased by an employees' trust) forming part of a pension, stock bonus, or profit-sharing plan which, at the time of such exercise or nonexercise, or at the time of termination of the plan if earlier, met the requirements of section 401(a);

(2) a retirement annuity contract purchased by an employer (and not by an employees' trust) pursuant to a plan which, at the time of such exercise or nonexercise, or at the time of termination of the plan if earlier, was a plan described in section 403(a);

(3) a retirement annuity contract purchased for an employee by an employer which is an organization referred to in section 170(b)(1)(A)(ii) or (vi), or which is a religious organization (other than a trust), and which is exempt from tax under section 501(a);

(4) chapter 73 of title 10 of the United States Code; or

(5) an individual retirement account described in section 408(a) [, an individual retirement annuity described in section 408(b), or a retirement bond described in section 409(a)] *or an individual retirement annuity described in section 408(b).*

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Subchapter C—Deductions

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SEC. 2522. CHARITABLE AND SIMILAR GIFTS.

(a) CITIZENS OR RESIDENTS.—* * *

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(c) DISALLOWANCE OF DEDUCTIONS IN CERTAIN CASES.—

(1) No deduction shall be allowed under this section for a gift to or for the use of an organization or trust described in section 508(d) or 4948(c)(4) subject to the conditions specified in such sections.

(2) Where a donor transfers an interest in property (other than an interest described in section 170(f)(3)(B)) to a person, or for use, described in subsection (a) or (b) and an interest in the same property is retained by the donor, or is transferred or has been transferred (for less than an adequate and full consideration in money or money's worth) from the donor to a person, or for a use, not described in subsection (a) or (b), no deduction shall be allowed under this section for the interest which is, or has been transferred to the person, or for the use, described in subsection (a) or (b), unless—

(A) in the case of a remainder interest, such interest is in a trust which is a charitable remainder annuity trust or a charitable remainder unitrust (described in section 664) or a pooled income fund (described in section 642(c)(5)), or

(B) in the case of any other interest, such interest is in the form of a guaranteed annuity or is a fixed percentage distributed yearly of the fair market value of the property (to be determined yearly).

(3) Rules similar to the rules of section 2055(e)(4) shall apply for purposes of paragraph (2).

(4) REFORMATIONS TO COMPLY WITH PARAGRAPH (2).—

(A) IN GENERAL.—A deduction shall be allowed under subsection (a) in respect of any qualified reformation.

(B) RULES SIMILAR TO SECTION 2055(e)(3) TO APPLY.—For purposes of this paragraph, rules similar to the rules of section 2055(e)(3) shall apply.

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Subtitle C—Employment Taxes and Collection of Income Tax at Source

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CHAPTER 21—FEDERAL INSURANCE CONTRIBUTIONS ACT

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Subchapter C—General Provisions

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SEC. 3121. DEFINITIONS.

(a) WAGES.—For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall include—

(1) that part of the remuneration which, after remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) equal to the contribution and benefit base (as determined under section 230 of the Social Security Act) with respect to employment has been paid to an individual by an employer during the calendar year with respect to which such contribution and benefit base is effective, is paid to such individual by such employer during such calendar year. If an employer (hereinafter referred to as successor employer) during any calendar year acquires substantially all the property used in a trade or business of another employer (hereinafter referred to as a predecessor), or used in a separate unit of a trade or business of a predecessor, and immediately after the acquisition employs in his trade or business an individual who immediately prior to the acquisition was employed in the trade or business of such predecessor, then, for the purpose of determining whether the successor employer has paid remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) with respect to employment equal to the contribution and benefit base (as determined under section 230 of the Social Security Act) to such individual during such calendar year, any remuneration (other than remuneration referred to in the succeeding paragraph of this subsection) with respect to employment paid (or considered under this paragraphs as having been paid) to such individual by such predecessor during such calendar year and prior to such acquisition shall be considered as having been paid by such successor employer;

* * * * * * *

(5) any payment made to, or on behalf of, an employee or his beneficiary—

(A) from or to a trust described in section 401(a) which is exempt from tax under section 501(a) at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employeee and not as a beneficiary of the trust,

(B) under or to an annuity plan which, at the time of such payment, is a plan described in section 403(a),

[(C) under or to a bond purchase plan which, at the time of such payment, is a qualified bond purchase plan described in section 405(a),**]**

[(D)**]***(C)* under a simplified employee pension if, at the time of the payment, it is reasonable to believe that the employee will be entitled to a deduction under section 219(b)(2) for such payment.

[(E)**]***(D)* under or to an annuity contract described in section 403(b), other than a payment for the purchase of such contract which is made by reason of a salary reduction agreement (whether evidenced by a written instrument or otherwise),

[(F)](*E*) under or to an exempt governmental deferred compensation plan (as defined in subsection (v)(3)), or

[(G)](*F*) to supplement pension benefits under a plan or trust described in any of the foregoing provisions of this paragraph to take into account some portion or all of the increase in the cost of living (as determined by the Secretary of Labor) since retirement but only if such supplemental payments are under a plan which is treated as a welfare plan under section 3(2)(B)(ii) of the Employee Retirement Income Security Act of 1974;

* * * * * * *

(18) any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 127 or 129; [or]

(19) the value of any meals or lodging furnished by or on behalf of the employer if at the time of such furnishing it is reasonable to believe that the employee will be able to exclude such items from income under section 119[.] *; or*

(20) any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from income under section 117 or 132.

Nothing in the regulations prescribed for purposes of chapter 24 (relating to income tax withholding) which provides an exclusion from "wages" as used in such chapter shall be construed to require a similar exclusion from "wages" in the regulations prescribed for purposes of this chapter.

Except as otherwise provided in regulations prescribed by the Secretary, any third party which makes a payment included in wages solely by reason of the parenthetical matter contained in subparagraph (A) of paragraph (2) shall be treated for purposes of this chapter and chapter 22 as the employer with respect to such wages.

(b) EMPLOYMENT.—For purposes of this chapter, the term "employment" means any service, of whatever nature, performed (A) by an employee for the person employing him, irrespective of the citizenship or residence of either, (i) within the United States, or (ii) on or in connection with an American vessel or American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the employee is employed on the vessel or aircraft it touches at a port in the United States, if the employee is employed on and in connection with such vessel or aircraft when outside the United States, or (B) outside the United States by a citizen of the United States [a citizen or resident of the United States (effective for remuneration paid after December 31, 1983)] as an employee for an American employer (as defined in subsection (h)), or (C) if it is service, regardless of where or by whom performed, which is designated as employment or recognized as equivalent to employment under an agreement entered into under section 233 of the Social Security Act; except that such term shall not include—

(1) service performed by foreign agricultural workers [(A) under contracts entered into in accordance with title V of the Agricultural Act of 1949, as amended (7 U.S.C. 1461-1468), or (B)] lawfully admitted to the United States from the Bahamas, Jamaica, and the other British West Indies, or from any other foreign country or possession thereof, on a temporary basis to perform agricultural labor;

* * * * * * *

(5) service performed in the employ of the United States or any instrumentality of the United States, if such service—

(A) would be excluded from the term "employment" for purposes of this title if the provisions of paragraphs (5) and (6) of this subsection as in effect in January 1983 had remained in effect, and

(B) is performed by an individual who (i) has been continuously *performing service which is excluded from the term "employment"* in the employ of the United States or an instrumentality thereof since December 31, 1983 (and for this purpose an individual who returns to the performance of such service after being separated therefrom following a previous period of such service shall nevertheless be considered upon such return as having been continuously in the employ of the United States or an instrumentality thereof, regardless of whether the period of such separation began before, on, or after December 31, 1983, if the period of such separation does not exceed 365 consecutive days), or (ii) is receiving an annuity from the Civil Service Retirement and Disability Fund, or benefits (for service as an employee) under another retirement system established by law of the United States for employees of the Federal Government other than for members of the uniformed services);

except that this paragraph shall not apply with respect to—

(i) service performed as the President or Vice President of the United States,

(ii) service performed—

(I) in a position placed in the Executive Schedule under Sections 5312 through 5317 of title 5, United States Code,

(II) as a noncareer appointee in the Senior Executive Service or a noncareer member of the Senior Foreign Service, or

(III) in a position to which the individual is appointed by the President (or his designee) or the Vice President under section 105(a)(1), 106(a)(1), or 107 (a)(1) or (b)(1) of title 3, United Stated Code, if the maximum rate of basic pay for such position is at or above the rate for level V of the Executive Schedule,

(iii) service performed as the Chief Justice of the United States, an Associate Justice of the Supreme

Court, a judge of a United States court of appeals, a judge of a United States District court (including the district court of a territory), a judge of the United States Claims Court, a judge of the United States Court of International Trade, a judge of the United States Tax Court, a United States magistrate, or a referee in bankruptcy or United States bankruptcy judge,

(iv) service performed as a Member, Delegate, or Resident Commissioner of or to the Congress, or

(v) any other service in the legislative branch of the Federal Government if such service is performed by an individual who, on December 31, 1983, is not subject to subchapter III of chapter 83 of title 5, United States Code;

* * * * * * *

(10) service performed in the employ of—

(A) a school, college, or university, or

(B) an organization described in section 509(a)(3) if the organization is organized, and at all times thereafter is operated, exclusively for the benefit of, to perform the functions of, or to carry out the purposes of a school, college, or university and is operated, supervised, or controlled by or in connection with such school, college, or university unless it is a school, college, or university of a State or a political subdivision thereof and the services performed in its employ by a student referred to in section 218(c)(5) of the Social Security Act are covered under the agreement between the Secretary of [Health, Education, and Welfare] Health and Human Services and such State entered into pursuant to section 218 of such Act;

if such service is performed by a student who is enrolled and regularly attending classes at such school, college, or university;

* * * * * * *

(i) Computation of Wages in Certain Cases.—

(1) Domestic service.—For purposes of this chapter, in the case of domestic service described in subsection (a)(7)(B), any payment of cash remuneration for such service which is more or less than a whole-dollar amount shall, under such conditions and to such extent as may be prescribed by regulations made under this chapter, be computed to the nearest dollar. For the purpose of the computation to the nearest dollar, the payment of a fractional part of a dollar shall be disregarded unless it amounts to one-half dollar or more, in which case it shall be increased to $1. The amount of any payment of cash remuneration so computed to the nearest dollar shall, in lieu of the amount actually paid, be deemed to constitute the amount of cash remuneration for purposes of subsection (a)(7)(B).

(2) Service in the uniformed services.—For purposes of this chapter, in the case of an individual performing service, as a member of a uniformed service, to which the provisions of

subsection (m)(1) are applicable, the term "wages" shall, subject to the provisions of subsection (a)(1) of this section, include as such individual's remuneration for such service only his basic pay as described in [section 102(10) of the Servicemen's and Veterans' Survivor Benefits Act.] *chapter 3 and section 1009 of title 37, United States Code.*

* * * * * * *

(m) SERVICE IN THE UNIFORMED SERVICES.—For purposes of this chapter—

(1) INCLUSION OF SERVICE.—The term "employment" shall, notwithstanding the provisions of subsection (b), of this section, include service performed by an individual as a member of a uniformed service on active duty; but such term shall not include any such service which is performed while on leave without pay.

(2) ACTIVE DUTY.—The term "active duty" means "active duty" as described in [section 102 of the Servicemen's and Veterans' Survivor Benefits Act,] *paragraph (21) of section 101 of title 38, United States Code* except that it shall also include "active duty for training" as described in [such section] *paragraph (22) of such section.*

(3) INACTIVE DUTY TRAINING.—The term "inactive duty training" means "inactive duty training" as described in [such section 102] *paragraph (23) of such section 101.*

* * * * * * *

(n) MEMBER OF A UNIFORMED SERVICE.—For purposes of this chapter, the term "member of a uniformed service" means any person appointed, enlisted, or inducted in a component of the Army, Navy, Air Force, Marine Corps, or Coast Guard (including [a reserve component of a uniformed service as defined section 102(3) of the Servicemen's and Veterans' Survivor Benefits Act] *reserve component as defined in section 101(27) of title 38, United States Code),* or in one of those services without specification of component, or as a commissioned officer of the Coast and Geodetic Survey, *the National Oceanic and Atmospheric Administration Corps,* or the Regular or Reserve Corps of the Public Health Service, and any person serving in the Army or Air Force under call or conscription. The term includes—

(1) a retired member of any of those services;

(2) a member of the Fleet Reserve or Fleet Marine Corps Reserve;

(3) a cadet at the United States Military Academy, a midshipman at the United States Naval Academy, and a cadet at the United States Coast Guard Academy or United States Air Force Academy;

(4) a member of the Reserve Officers' Training Corps, the National Reserve Officers' Training Corps, or the Air Force Reserve Officers' Training Corps, when ordered to annual training duty for fourteen days or more, and while performing authorized travel to and from that duty; and

(5) any person while en route to or from, or at, a place for final acceptance or for entry upon active duty in the [military or naval] *military, naval, or air* service—

(A) who has been provisionally accepted for such duty; or

(B) who, under the [Universal Military Training and Service Act] *Military Selective Service Act* has been selected for active [military or naval] *military, naval, or air* service;

and has been ordered or directed to proceed to such place. The term does not include a temporary member of the Coast Guard Reserve.

* * * * * * *

(v) Treatment of Certain Deferred Compensation and Salary Reduction Arrangements.—

(1) Certain employer contributions treated as wages.—Nothing in any paragraph of subsection (a) (other than paragraph (1)) shall exclude from the term "wages"—

(A) any employer contribution under a qualified cash or deferred arrangement (as defined in section 401(k)) to the extent not included in gross income by reason of section 402(a)(8), or

[(B) any amount treated as an employer contribution under section 414(h)(2).]

(B) any amount treated as an employer contribution under section 414(h)(2) where the pickup referred to in such section is pursuant to a salary reduction agreement (whether evidenced by a written instrument or otherwise).

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Chapter 22—RAILROAD RETIREMENT TAX ACT

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Subchapter D—General Provisions

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SEC. 3231. DEFINITIONS.

(a) Employer.—* * *

* * * * * * *

(e) Compensation.—For purposes of this chapter—

(1) The term "compensation" means any form of money remuneration paid to an individual for services rendered as an employee to one or more employers. Such term does not include (i) the amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund; to provide for any such payment) made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents) or for a class or classes of his employees (or for a

class or classes of his employees and their dependents), on account of sickness or accident disability or medical or hospitalization expenses in connection with sickness or accident disability, (ii) tips (except as provided under paragraph (3)), or (iii) an amount paid specifically—either as an advance, as reimbursement or allowance—for traveling or other bona fide and necessary expenses incurred or reasonably expected to be incurred in the business of the employer provided any such payment is identified by the employer either by a separate payment or by specifically indicating the separate amounts where both wages and expense reimbursement or allowance are combined in a single payment. Such term does not include remuneration for service which is performed by a nonresident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of section 101(a)(15) of the Immigration and Nationality Act, as amended, and which is performed to carry out the purpose specified in subparagraph (F) or (J), as the case may be. Compensation which is paid in one calendar month but which would be payable in a prior or subsequent taxable month but for the fact that prescribed date of payment would fall on a Saturday, Sunday or legal holiday shall be deemed to have been paid in such prior or subsequent taxable month. Compensation which is earned during the period for which the Secretary shall require a return of taxes under this chapter to be made and which is payable during the calendar month following such period shall be deemed to have been paid during such period only. For the purpose of determining the amount of taxes under sections 3201 and 3221, compensation earned in the service of a local lodge or division of a railway-labor-organization employer shall be disregarded with respect to any calendar month if the amount thereof is less than $25. Compensation for service as a delegate to a national or international convention of a railway labor organization defined as an "employer" in subsection (a) of this section shall be disregarded for purposes of determining the amount of taxes due pursuant to this chapter if the individual rendering such service has not previously rendered service, other than as such a delegate, which may be included in his "years of service" for purposes of the Railroad Retirement Act.

(2) A payment made by an employer to an individual through the employer's payroll shall be presumed, in the absence of evidence to the contrary, to be compensation for service rendered by such individual as an employee of the employer in the period with respect to which the payment is made. An employee receiving retroactive wage payments shall be deemed to be paid compensation in the period during which such compensation is earned only upon a written request by such employee, made within six months following the payment, and showing that such compensation was earned during a period other than the period in which it was paid. An employee shall be deemed to be paid "for time lost" the amount he is paid by an employer with respect to an identifiable period of absence from the active service of the employer, including

absence on account of personal injury, and the amount he is paid by the employer for loss of earnings resulting from his displacement to a less remunerative position or occupation. If a payment is made by an employer with respect to a personal injury and includes pay for time lost, the total payment shall be deemed to be paid for time lost unless, at the time of payment, a part of such payment is specifically apportioned to factors other than time lost, in which event only such part of the payment as is not so apportioned shall be deemed to be paid for time lost.

(3) Solely for purposes of the tax imposed by section 3201 and other provisions of this chapter insofar as they relate to such tax, the term "compensation" also includes cash tips received by an employee in any calendar month in the course of his employment by an employer unless the amount of such cash tips is less than $20.

(4)(A) For purposes of applying sections 3201(b) and 3221(b) (and so much of section 3211(a) as relates to the rates of the taxes imposed by sections 3101 and 3111), in the case of payments made to an employee or any of his dependents on account of sickness or accident disability, clause (i) of the second sentence of paragraph (1) shall exclude from the term "compensation" only—

(i) payments which are received under a workmen's compensation law, and

(ii) benefits received under the Railroad Retirement Act of 1974.

(B) Notwithstanding any other provision of law, for purposes of the sections specified in subparagraph (A), the term "compensation" shall include benefits paid under section 2(a) of the Railroad Unemployment Insurance Act for days of sickness, except to the extent that such sickness (as determined in accordance with standards prescribed by the Railroad Retirement Board) is the result of on-the-job injury.

(C) Under regulations prescribed by the Secretary, subparagraphs (A) and (B) shall not apply to payments made after the expiration of a 6-month period comparable to the 6-month period described in section 3121(a)(4).

(D) Except as otherwise provided in regulations prescribed by the Secretary, and third party which makes a payment included in compensation solely by reason of subparagraph (A) or (B) shall be treated for purposes of this chapter as the employer with respect to such compensation.

(5) The term "compensation" shall not include any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from income under section 117 or 132.

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CHAPTER 23—FEDERAL UNEMPLOYMENT TAX ACT

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SEC. 3306. DEFINITIONS.

(a) EMPLOYER.—* * *

(b) Wages.—For purposes of this chapter, the terms "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

(1) that part of the remuneration which, after remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) equal to $7,000 with respect to employment has been paid to an individual by an employer during any calendar year, is paid to such individual by such employer during such calendar year. If an employer (hereinafter referred to as successor employer) during any calendar year acquires substantially all the property used in a trade or business of another employer (hereinafter referred to as a predecessor), or used in a separate unit of a trade or business of a predecessor, and immediately after the acquisition employs in his trade or business an individual who immediately prior to the acquisition was employed in the trade or business of such predecessor, then, for the purpose of determining whether the successor employer has paid remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) with respect to employment equal to $7,000 to such individual during such calendar year, any remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) with respect to employment paid (or considered under this paragraph as having been paid) to such individual by such predecessor during such calendar year and prior to such acquisition shall be considered as having been paid by such successor employer;

* * * * * * *

(5) any payment made to, or on behalf of, an employee or his beneficiary—

(A) from or to a trust described in section 401(a) which is exempt from tax under section 501(a) at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust, or

(B) under or to an annuity plan which, at the time of such payment, is a plan described in section 403(a),

[(C) under or to a bond purchase plan which, at the time of such payment, is a qualified bond purchase plan described in section 405(a),]

[(D)] *(C)* under a simplified employee pension if, at the time of the payment, it is reasonable to believe that the employee will be entitled to a deduction under section 219 [section 219(b)(2) (effective with respect to remuneration paid after December 31, 1984)] for such payment, [(E)]*(D)* Under or to an annuity contract described in section 403(b), other than a payment for the purchase of such contract which is made by reason of a salary reduction agreement (whether evidenced by a written instrument or otherwise),

[(F)]*(E)* under or to an exempt governmental deferred compensation plan (as defined in section 3121(v)(3)), or

[(G)] *(F)* to supplement pension benefits under a plan or trust described in any of the foregoing provisions of this paragraph to take into account some portion or all of the increase in the cost of living (as determined by the Secretary of Labor) since retirement but only if such supplemental payments are under a plan which is treated as a welfare plan under section 3(2)(B)(ii) of the Employee Retirement Income Security Act of 1974;

* * * * * * *

(13) any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 127 or 129; [or]

(14) the value of any meals or lodging furnished by or on behalf of the employer if at the time of such furnishing it is reasonable to believe that the employee will be able to exclude such items from income under section 119[.] *; or*

(15) any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from income under section 117 or 132.

Nothing in the regulations prescribed for purposes of chapter 24 (relating to income tax withholding) which provides an exclusion from "wages" as used in such chapter shall be construed to require a similar exclusion from "wages" in the regulations prescribed for purposes of this chapter.

Except as otherwise provided in regulations prescribed by the Secretary, any third party which makes a payment included in wages solely by reason of the parenthetical matter contained in subparagraph (A) of paragraph (2) shall be treated for purposes of this chapter and chapter 22 as the employer with respect to such wages.

* * * * * * *

(r) TREATMENT OF CERTAIN DEFERRED COMPENSATION AND SALARY REDUCTION ARRANGEMENTS.—

(1) CERTAIN EMPLOYER CONTRIBUTIONS TREATED AS WAGES.—Nothing in any paragraph of subsection (b) (other than paragraph (1)) shall exclude from the term "wages"—

(A) any employer contribution under a qualified cash or deferred arrangement (as defined in section 401(k)) to the extent not included in gross income by reason of section 402(a)(8), or

[(B) any amount treated as an employer contribution under section 414(h)(2).]

(B) any amount treated as an employer contribution under section 414(h)(2) where the pickup referred to in such section is pursuant to a salary reduction agreement (whether evidenced by a written instrument or otherwise).

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CHAPTER 24—COLLECTION OF INCOME TAX AT SOURCE

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Subchapter A—Withholding from Wages

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SEC. 3401. DEFINITIONS.

(a) Wages.—For purposes of this chapter, the term "wages" means all remuneration (other than fees paid to a public official) for services performed by an employee for his employer, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include remuneration paid—

(1) for active service performed in a month for which such employee is entitled to the benefits of section 112 (relating to certain combat pay of members of the Armed Forces of the United States); or

* * * * * * *

(12) to, or on behalf of, an employee or his beneficiary—

(A) from or to a trust described in section 401(a) which is exempt from tax under section 501(a) at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust; or

(B) under or to an annuity plan which, at the time of such payment, is a plan described in section 403(a); or

[(C) under or to a bond purchase plan which, at the time of such payment, is a qualified bond purchase plan described in section 405(a); or]

[(D)] *(C)* for a payment described in section 219 if, at the time of such payment, it is reasonable to believe that the employee will be entitled to a deduction under such section for payment; or

* * * * * * *

(18) for any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 127 or 129; [or]

(19) for any medical care reimbursement made to or for the benefit of an employee under a self-insured medical reimbursement plan (within the meaning of section 105(h)(6))[.]*; or*

(20) any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that

the employee will be able to exclude such benefit from income under section 117 or 132.

* * * * * * *

SEC. 3405. SPECIAL RULES FOR PENSIONS, ANNUITIES, AND CERTAIN OTHER DEFERRED INCOME.

(a) PENSIONS, ANNUITIES, ETC.—

(1) WITHHOLDING AS IF PAYMENT WERE WAGES.—* * *

* * * * * * *

(b) NONPERIODIC DISTRIBUTION.—

(1) WITHHOLDING.—The payor of any nonperiodic distribution (as defined in subsection (d)(3)) shall withhold from such distribution the amount determined under paragraph (2).

(2) AMOUNT OF WITHHOLDING.—

(A) DISTRIBUTIONS WHICH ARE NOT QUALIFIED TOTAL DISTRIBUTIONS.—In the case of any nonperiodic distribution which is not a qualified total distribution, the amount withheld under paragraph (1) shall be the amount determined by multiplying such distribution by 10 percent.

(B) QUALIFIED TOTAL DISTRIBUTIONS.—In the case of any nonperiodic distribution which is a qualified total distribution, the amount withheld under paragraph (1) shall be determined under tables (or other computational procedures) prescribed by the Secretary which are based on the amount of tax which would be imposed on such distribution under section 402(e) if the recipient elected to treat such distribution as a lump-sum distribution (within the meaning of section 402(e)(4)(A)).

[(C) SPECIAL RULE FOR DISTRIBUTIONS BY REASONS OF DEATH.—In the case of any distribution described in subparagraph (B) from or under any plan or contract described in section 401(a), 403(a), or 403(b) which is made by reason of a participant's death, the Secretary, in prescribing tables or procedures under paragraph (1), shall take into account the exclusion from gross income provided by section 101(b) (whether or not allowable).]

(C) SPECIAL RULE FOR DISTRIBUTIONS BY REASON OF DEATH.—In the case of any nonperiodic distribution from or under any plan or contract described in section 401(a), 403(a), or 403(b)—

(i) which is made by reason of a participant's death, and

(ii) with respect to which the requirements of clauses (ii) and (iv) of subsection (d)(4)(A) are met,

subparagraph (A) or (B) (as the case may be) shall be applied by taking into account the exclusion from gross income provided by section 101(b) (whether or not allowable).

* * * * * * *

(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) DESIGNATED DISTRIBUTION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term "designated distribution" means any distribution or payment from or under—

(i) an employer deferred compensation plan,

(ii) an individual retirement plan (as defined in section 7701(a)(37)), or

(iii) a commercial annuity.

(B) EXCEPTIONS.—The term "designated distribution" shall not include—

(i) any amount which is wages without regard to this section, [and]

(ii) the portion of a distribution or payment which it is reasonable to believe is not includible in gross income[.], *and*

(iii) any amount which is subject to withholding under subchapter A of chapter 3 (relating to withholding of tax on nonresident aliens and foreign corporations) by the person paying such amount or which would be so subject but for a tax treaty.

(2) PERIODIC PAYMENT.—The term "periodic payment" means a designated distribution which is an annuity or similar periodic payment.

(3) NONPERIODIC DISTRIBUTION.—The term "nonperiodic distribution" means any designated distribution which is not a periodic payment.

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(8) MAXIMUM AMOUNT WITHHELD.—The maximum amount to be withheld under this section on any designated distribution shall not exceed the sum of the amount of money and the fair market value of other property (other than employer securities of the employer corporation (within the meaning of section 402(a)(3))) received in the distribution. *No amount shall be required to be withheld under this section in the case of any designated distribution which consists only of employer securities of the employer corporation (within the meaning of section 402(a)(3)) and cash (not in excess of $200) in lieu of fractional shares.*

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Subtitle D—Miscellaneous Excise Taxes

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CHAPTER 31—RETAIL EXCISE TAXES

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Subchapter B—Heavy Trucks and Trailers

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SEC. 4051. IMPOSITION OF TAX ON HEAVY TRUCKS AND TRAILERS SOLD AT RETAIL

(a) IMPOSITION OF TAX.—

(1) IN GENERAL.—* * *

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(b) SEPARATE PURCHASE OF TRUCK OR TRAILER AND PARTS AND ACCESSORIES THEREFOR.—Under regulations prescribed by the Secretary—

(1) IN GENERAL.—If—

(A) the owner, lessee, or operator of any vehicle which contains an article taxable under subsection (a) installs (or causes to be installed) any part or accessory on such vehicle, and

(B) such installation is not later than the date 6 months after the date such vehicle (as it contains such article) was first placed in service,

then there is hereby imposed on such installation a tax equal to 12 percent of the price of such part or accessory and its installation.

(2) EXCEPTIONS.—Paragraph (1) shall not apply if—

(A) the part or accessory installed is a replacement part or accessory or

(B) the aggregate price of the parts and accessories (and their installation) described in paragraph (1) with respect to any vehicle which does not exceed $200 (or such other amount or amounts as the Secretary may by regulations prescribe).

(3) INSTALLERS SECONDARILY LIABLE FOR TAX—[In addition to the owner, lessee, or operator of the vehicle, the owner of the trade or business installing the part or accessory shall be liable for the tax imposed by paragraph (1).] *The owners of the trade or business installing the parts or accessories shall be secondarily liable for the tax imposed by paragraph (1).*

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SEC. 4052. DEFINITIONS AND SPECIAL RULES.

(a) FIRST RETAIL SALE.—* * *

(b) DETERMINATION OF PRICE.—

(1) IN GENERAL.—In determining price for purposes of this subchapter—

(A) there shall be included any charge incident to placing the article in condition ready for use,

(B) there shall be excluded—

(i) the amount of the tax imposed by this subchapter,

(ii) if stated as a separate charge, the amount of any retail sale tax imposed by any State or political subdivision thereof or the District of Columbia, whether the liability for such tax is imposed on the vendor or vendee [and]

(iii) the fair market value (including any tax imposed by section 4071) at retail of any tires (not including any metal rim or rim base), and *(iv) the value of any component of such article if—*

(I) such component is furnished by the first user of such article, and

(II) such component has been used before such furnishing, and

(C) the price shall be determined without regard to any trade-in.

(2) SALES NOT AT ARM'S LENGTH.—In the case of any article sold (otherwise than through an arm's-length transaction) at less than the fair market price, the tax under this subchapter shall be computed on the price for which similar articles are sold at retail in the ordinary course of trade, as determined by the Secretary.

[(c) CERTAIN COMBINATIONS NOT TREATED AS MANUFACTURE.—For purposes of this subchapter (other than subsection (a)(3)(B)), a person shall not be treated as engaged in the manufacture of any article by reason of merely combining such article with any equipment or other item listed in section 4063(d).]

(c) CERTAIN COMBINATIONS NOT TREATED AS MANUFACTURE.—

(1) IN GENERAL.—For purposes of this subchapter (other than subsection (a)(3)(B)), a person shall not be treated as engaged in the manufacture of any article by reason of merely combining such article with any item listed in paragraph (2).

(2) ITEMS.—The items listed in this paragraph are any coupling device (including any fifth wheel), wrecker crane, loading and unloading equipment (including any crane, hoist, winch, or power liftgate), aerial ladder or tower, snow and ice control equipment, earthmoving, excavation and construction equipment, spreader, sleeper cab, cab shield, or wood or metal floor.

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[SEC. 4053. EXEMPTIONS.

[(a) EXEMPTION OF SPECIFIED ARTICLES.—No tax shall be imposed under section 4051 on any article specified in subsection (a) of section 4063.

[(b) CERTAIN EXEMPTIONS MADE APPLICABLE.—The exemptions provided by section 422(a) are hereby extended to the tax imposed by section 4051.]

SEC. 4053. EXEMPTIONS.

No tax shall be imposed by section 4051 on any of the following articles:

(1) CAMPER COACHES BODIES FOR SELF-PROPELLED MOBILE HOMES.—Any article designed—

(A) to be mounted or placed on automobile trucks, automobile truck chassis, or automobile chassis, and

(B) to be used primarily as living quarters or camping accommodations.

(2) FEED, SEED, AND FERTILIZER EQUIPMENT.—Any body primarily designed—

(A) to process or prepare seed, feed, or fertilizer for use on farms,

(B) to haul feed, seed, or fertilizer to and on farms,

(C) to spread feed, seed, or fertilizer on farms,

(D) to load or unload feed, seed, or fertilizer on farms, or

(E) for any combination of the foregoing.

(3) House trailers.—Any house trailer.

(4) Ambulances, hearses, etc.—Any ambulance, hearse, or combination ambulance-hearse.

(5) Concrete mixers.—Any article designed—

(A) to be placed or mounted on an automobile truck chassis or truck trailer or semitrailer chassis, and

(B) to be used to process or prepare concrete.

(6) Trash containers, etc.—Any box, container, receptacle, bin, or other similar article—

(A) which is designed to be used as a trash container and is not designed for the transportation of freight other than trash, and

(B) which is not designed to be permanently mounted on or permanently affixed to an automobile truck chassis or body.

(7) Rail trailers and rail vans.—Any chassis or body of a trailer or semitrailer which is designed for use both as a highway vehicle and a railroad car. For purposes of the preceding sentence, piggyback trailer or semitrailer shall not be treated as designed for use as a railroad car.

CHAPTER 32—MANUFACTURERS EXCISE TAXES

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Subchapter A—Automotive and Related Items

[Part I. Motor vehicles.]
Part I. Gas guzzlers.
Part II. Tires [and tubes.]
Part III. Petroleum products.

[PART I—MOTOR VEHICLES] *PART I—GAS GUZZLERS*

[Sec. 4061. Imposition of tax.
[Sec. 4062. Articles classified as parts.
[Sec. 4063. Exemptions.
[Sec. 4064 Gas guzzler tax.]
Sec. 4064. Gas guzzlers tax.

[SEC. 4061. IMPOSITION OF TAX.

[(a) Trucks, Buses, Tractors, Etc.—

[(1) Tax imposed.—There is hereby imposed upon the following articles (including in each case parts or accessories therefor sold on or in connection therewith or with the sale thereof) sold by the manufacturer, producer, or importer a tax of 10 percent of the price for which so sold, except that on and after October 1, 1984, the rate shall be 5 percent—

[Automobile truck chassis.
[Automobile truck bodies.
[Automobile bus chassis.
[Automobile bus bodies.
[Truck and bus trailer and semitrailer chassis.

[Truck and bus trailer and semitrailer and bus trailer and semitrailer chassis.

[Truck and bus trailer and semitrailer bodies.

[Tractors of the kind chiefly used for highway transportation in combination with a trailer or semitrailer.

A sale of an automobile truck, bus, truck or bus trailer or semitrailer shall, for the purposes of this subsection, be considered to be a sale of a chassis and of a body enumerated in this subsection.

[(2) Exclusion for trucks with gross vehicle weight of 33,000 pounds or less, and certain trailers.—

[(A) The tax imposed by paragraph (1) shall not apply to automobile truck chassis and automobile truck bodies, suitable for use with a vehicle which has a gross vehicle weight of 33,000 pounds or less (as determined under regulations prescribed by the Secretary).

[(B) The tax imposed by paragraph (1) shall not apply to truck trailer and semitrailer chassis and bodies, suitable for use with a trailer or semitrailer which has a gross vehicle weight of 26,000 pounds or less (as determined under regulations prescribed by the Secretary).

[(b) Parts and Accessories.—

[(1) Except as provided in paragraph (2), there is hereby imposed upon parts or accessories (other than tires and inner tubes) for any of the articles enumerated in subsection (a)(1) sold by the manufacturer, producer, or importer a tax equivalent to 8 percent of the price for which so sold, except that on and after October 1, 1984, the rate shall be 5 percent.

[(2) No tax shall be imposed under this subsection upon any part or accessory which is suitable for use (and ordinarily is used) on or in connection with, or as a component part of, any chassis or body for a passenger automobile, any chassis or body for a trailer or semitrailer suitable for use in connection with a passenger automobile, or a house trailer.

[(c) Termination.—

[(1) Tax on parts and accessories.—On and after the day after the date of the enactment of this subsection, the tax imposed by subsection (b) shall not apply.

[(2) Tax on trucks.—On and after April 1, 1983, the tax imposed by subsection (a) shall not apply.

[SEC. 4062. ARTICLES CLASSIFIED AS PARTS.

[For the purposes of section 4061, spark plugs, storage batteries, leaf springs, coils, timers, and tire chains, which are suitable for use on or in connection with, or as component parts of, any of the articles enumerated in section 4061(a), shall be considered parts or accessories for such articles, whether or not primarily adapted for such use.

[SEC. 4063. EXEMPTIONS.

[(a) Specified Articles.—

[(1) Camper coaches bodies for self-propelled mobile homes.—The tax imposed under section 4061 shall not apply in the case of articles designed (A) to be mounted or placed on automobile trucks, automobile truck chassis, or automobile chassis, and (B) to be used primarily as living quarters or camping accommodations.

[(2) FEED, SEED, AND FERTILIZER EQUIPMENT.—The tax imposed under section 4061 shall not apply in the case of any body, part or accessory primarily designed—

[(A) to process or prepare seed, feed, or fertilizer for use on farms;

[(B) to haul feed, seed, or fertilizer to and on farms;

[(C) to spread feed, seed, or fertilizer on farms; or

[(D) to load or unload feed, seed, or fertilizer on farms; or

[(E) for any combination of the foregoing.

[(3) HOUSE TRAILERS.—The tax imposed under section 4061(a) shall not apply in the case of house trailers.

[(4) AMBULANCES, HEARSES, ETC.—The tax imposed by section 4061(a) shall not apply in the case of an ambulance, hearse, or combination ambulance-hearse.

[(5) CONCRETE MIXERS.—The tax imposed under section 4061 shall not apply in the case of—

[(A) any article designed (i) to be placed or mounted on an automobile truck chassis or truck trailer or semitrailer chassis and (ii) to be used to process or prepare concrete, and

[(B) parts or accessories designed primarily for use on or in connection with an article described in subparagraph (A).

[(6) BUSES.—The tax imposed under section 4061(a) shall not apply in the case of any automobile bus chassis or automobile body.

[(7) TRASH CONTAINERS, ETC.—The tax imposed under section 4061(a) shall not apply in the case of any box, container, receptacle, bin, or other similar article which is to be used as a trash container and is not designed for the transportation of freight other than trash, and which is not designed to be permanently mounted on or permanently affixed to an automobile truck chassis or body, or in the case of parts or accessories designed primarily for use on, in connection with, or as a component part of any such article.

[(8) RAIL TRAILERS AND RAIL VANS.—The tax imposed under section 4061 shall not apply in the case of—

[(A) any chassis or body of a trailer or semitrailer which is designed for use both as a highway vehicle and a railroad car, and

[(B) any parts or accessories designed primarily for use on or in connection with an article described in subparagraph (A).

For purposes of this paragraph, a piggy-back trailer or semitrailer shall not be treated as designed for use as a railroad car.

[(b) SALES TO MANUFACTURERS.—Under regulations prescribed by the Secretary, the tax under section 4061 shall not apply in the case of sales of bodies by the manufacturer, producer, or importer to a manufacturer or producer of automobile trucks or other automobiles to be sold by such vendee. For the purposes of section 4061, such vendee shall be considered the manufacturer or producer of such bodies.

[(c) REBUILT PARTS AND ACCESSORIES.—Under regulations prescribed by the Secretary, the tax imposed under section 4061(b) shall not apply in the case of rebuilt parts or accessories.

[(d) RESALE AFTER CERTAIN MODIFICATIONS.—Under regulations prescribed by the Secretary, the tax imposed by section 4061 shall not apply to the resale of any article described in section 4061(a)(1) if before such resale such article was merely combined with any coupling device (including any fifth wheel), wrecker crane, loading and unloading equipment (including any crane, hoist, winch, or power liftgate), aerial ladder or tower, snow and ice control equipment, earthmoving, excavation and construction equipment, spreader, sleeper cab, cab shield, or wood or metal floor.

[(e) PARTS FOR LIGHT-DUTY TRUCKS.—The tax imposed by section 4061(b) shall not apply to the sale by the manufacturer, producer, or importer of any article which is to be resold by the purchaser on or in connection with the first retail sale of a light-duty truck, as described in section 4061(a)(2), or which is to be resold by the purchaser to a second purchaser for resale by such second purchaser on or in connection with the first retail sale of a light-duty truck.]

PART II—TIRES [AND TUBES]

Sec. 4071. Imposition of tax.
Sec. 4072. Definition.
[Sec. 4073. Exemptions.] *Sec. 4073. Exemption for tires with internal wire fastening.*

SEC. 4071. IMPOSITION OF TAX.

(a) IMPOSITION AND RATE OF TAX.—There is hereby imposed upon the following articles, if wholly or in part of rubber, sold by the manufacturer, producer, or importer, a tax at the following rates:

(1) Tires of the type used on highway vehicles, 9.75 cents a pound.

(2) Other tires (other than laminated tires to which paragraph (5) applies), 4.875 cents a pound.

(3) Inner tubes for tires, 10 cents a pound.

(4) Tread rubber, 5 cents a pound.

(5) Laminated tires (not of the type used on highway vehicles) which consist wholly of scrap rubber from used tire casings with an internal metal fastening agent, 1 cent a pound.

(b) SPECIAL RULE FOR MANUFACTURERS WHO SELL AT RETAIL.—Under regulations prescribed by the Secretary, if the manfuacturer, producer, or importer of any tire [or inner tube] delivers such tire [or tube] to a retail store or retail outlet of such manufacturer, producer, or importer, he shall be liable for tax under subsection (a) in respect of such tire [or tube] in the same manner as if it has been sold at the time it was delivered to such retail store or outlet. This subsection shall not apply to an article in respect to which tax has been imposed by subsection (a). Subsection (a) shall not apply to an article in respect of which tax has been imposed by this subsection.

(c) Determination of Weight.—For purposes of this section, weight shall be based [on total weight, except that in the case of tires such total weight shall be exclusive of metal rims or rim bases.] *on total weight exclusive of metal rims or rim bases.* Total weight of the articles shall be determined under regulations prescribed by the Secretary.

(d) Termination.—On and after October 1, 1988, the taxes imposed by subsection (a) shall not apply .

(e) Tires on Imported Articles.—For the purposes of subsection (a), if an article imported into the United States is equipped with tires [or inner tubes (other than bicycle tires and inner tubes)]—

(1) the importer of the article shall be treated as the importer of the tires [and inner tubes] with which such article is equipped, and

(2) the sale of the article by the importer thereof shall be treated as the sale of the tires [and inner tubes] with which such article is equipped.

[This subsection shall not apply with respect to the sale of an article if a tax on such sale is imposed under section 4061 or if such article is an automobile bus chassis or an automobile bus body.] *This subsection shall not apply with respect to the sale of an automobile bus chassis or an automobile bus body.*

[(f) Imported Recapped or Retreaded United States Tires.—

[(1) In general.—For purposes of subsection (a)(4), in the case of a tire which has been exported from the United States, recapped or retreaded (other than from bead to bead) outside the United States, and imported into the United States—

[(A) the person importing such tire shall be treated as importing the tread rubber used in such recapping or retreading (determined as of the completion of the recapping or retreading), and

[(B) the sale of such tire by the importer thereof shall be treated as the sale of such tread rubber.

[(2) Exception for certain taxable sales.—Paragraph (1) shall not apply with respect to the sale of any tire if such tire is sold on or in connection with the sale of an article on which tax is imposed under section 4061.]

SEC. 4072. DEFINITIONS.

(a) Rubber.—For purposes of this chapter, the term "rubber" includes synthetic and substitute rubber.

[(b) Tread Rubber.—For purposes of this chapter, the term "tread rubber" means any material—

[(1) which is commonly or commercially known as tread rubber or camelback; or

[(2) which is a substitute for a material described in paragraph (1) and is of a type used in recapping or retreading tires.]

[(c)] *(b)* Tires of the Type Used on Highway Vehicles.—For purposes of this part, the term "tires of the type used on highway vehicles" means tires of the type used on—

(1) motor vehicles which are highway vehicles, or

(2) vehicles of the type used in connection with motor vehicles which are highway vehicles.

[SEC. 4073. EXEMPTIONS.

[(a) TIRES OF CERTAIN SIZES.—The tax imposed by section 4071 shall not apply to tires which are not more than 20 inches in diameter and not more than 1¾ inches in cross-section, if such tires are of all-rubber construction (whether hollow center or solid) without fabric or metal reinforcement.

[(b) TIRES WITH INTERNAL WIRE FASTENING.—The tax imposed by section 4071 shall not apply to tires of extruded tiring with an internal wire fastening agent.

[(c) EXEMPTION FROM TAX ON TREAD RUBBER IN CERTAIN CASES.—Under regulations prescribed by the Secretary, the tax imposed by section 4071(a)(4) shall not apply to tread rubber sold by the manufacturer, producer, or importer, to any person for use by such person otherwise than in the recapping or retreading of tires of the type used on highway vehicles.]

SEC. 4073. EXEMPTION FOR TIRES WITH INTERNAL WIRE FASTENING.

The tax imposed by section 4071 shall not apply to tires of extruded tiring with an internal wire fastening agent.

PART III—PETROLEUM PRODUCTS

* * * * * * *

Subpart A—Gasoline

* * * * * * *

SEC. 4081. IMPOSITION OF TAX.

(a) IN GENERAL.—There is hereby imposed on gasoline sold by the producer or importer thereof, or by any producer of gasoline, a tax of 9 cents a gallon.

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(c) GASOLINE MIXED WITH ALCOHOL.—

[(1) IN GENERAL.—Under regulations prescribed by the Secretary, subsection (a) shall be applied by substituting "4 cents" for "9 cents" in the case of the sale of any gasoline—

[(A) in a mixture with alcohol, if at least 10 percent of the mixture is alcohol, or

[(B) for use in producing a mixture at least 10 percent of which is alcohol.]

(1) IN GENERAL.—Under regulations prescribed by the Secretary, subsection (a) shall be applied—

(A) by substituting "4 cents" for "9 cents" in the case of the sale of any gasohol (the gasoline in which was not taxed under subparagraph (B)), and

(B) by substituting "$4^{4}/_{9}$ cents" for "9 cents" in the case of the sale of any gasoline for use in producing gasohol.

For purposes of this paragraph, the term "gasohol" means any mixture of gasoline if at least 10 percent of such mixture is alcohol.

(2) LATER SEPARATION OF GASOLINE.—If any person separates the gasoline from a mixture of gasoline and alcohol on which tax

was imposed under subsection (a) at [the rate of] *a rate equivalent* to 4 cents a gallon by reason of this subsection (or with respect to which a credit or payment was allowed or made by reason of section 6427(f)(1)), such person shall be treated as the producer of such gasoline. The amount of tax imposed on any sale of such gasoline by such person shall be [5] *$4\frac{5}{9}$* cents a gallon.

SEC. 4082. DEFINITIONS.

(a) PRODUCERS.—* * *

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[(d) WHOLESALE DISTRIBUTOR.—As used in subsection (a), the term "wholesale distributor" includes any person who—

[(1) sells gasoline to producers, to retailers, or to users who purchase in bulk quantities for delivery into bulk storage tanks, and

[(2) elects to register with respect to the tax imposed by section 4081.

[Such term does not include any person who (excluding the term "wholesale distributor" from subsection (a)) is a producer or importer.]

(d) WHOLESALE DISTRIBUTOR.—As used in subsection (a), the term "wholesale distributor" includes—

(1) any person who—

(A) sells gasoline to producers, retailers, or to users who purchase in bulk quantities and deliver into bulk storage tanks, or

(B) purchases gasoline from a producer and distributes such gasoline to 10 or more retail gasoline stations under common management with such person,

(2) but only if such person elects to register with respect to the tax imposed by section 4081.

Such term does not include any person who (excluding the term "wholesale distributor" from subsection (a)) is a producer or importer.

(e) CERTAIN SELLERS OF GASOLINE FOR USE IN NONCOMMERCIAL AVIATION TREATED AS PRODUCERS.—For purposes of this subpart, the term "producer" includes any person who regularly sells gasoline to owners, lessees, or operators of aircraft for use as fuel in such aircraft in noncommercial aviation (as defined in section 4041(c)(4)).

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Subchapter F—Special Provisions Applicable to Manufacturers Tax

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SEC. 4216. DEFINITION OF PRICE.

(a) CONTAINERS, PACKING AND TRANSPORTATION CHARGES.—In determining, for the purposes of this chapter, the price for which an article is sold, there shall be included any charge for coverings and containers of whatever nature, and any charge incident to placing the article in condition packed ready for shipment, but there shall be excluded the amount of tax imposed by this chapter, whether or not states as a separate charge. A transportation, delivery, insurance, installation, or other charge (not required by the foregoing sentence to be included) shall be excluded from the price only if the amount thereof is established to the satisfaction of the Secretary in accordance with the regulations.

(b) Constructive Sale Price—

(1) In General.—If an article is—

(A) sold at retail,

(B) sold on consignment, or

(C) sold (otherwise than through an arm's length transaction) at less than the fair market price,

the tax under this chapter shall (if based on the price for which the article is sold) be computed on the price for which such articles are sold, in the ordinary course of trade, by manufacturers or producers thereof, as determined by the Secretary. In the case of an article sold at retail **[**(other than an article the sale of which is taxable under section 4061(a))**]** the computation under the preceding sentence shall be on whichever of the following prices is the lower: (i) the price for which such article is sold, or (ii) the highest price for which such articles are sold to wholesale distributors, in the ordinary course of trade, by manufacturers or producers thereof, as determined by the Secretary. In the case of an article the sale of which is taxable under section 4061(a) and which is sold at retail, the computation under the first sentence of this paragraph shall be a percentage (not greater than 100 percent) of the actual selling price based on the highest price for which such articles are sold by manufacturers and producers in the ordinary course of trade (determined without regard to any individual manufacturer's or producer's cost).**]** This paragraph shall not apply if paragraph (2) applies.

(2) Special Rule.—If an article is sold at retail or to a retailer, and if—

(A) the manufacturer, producer, or importer of such article regularly sells such articles at retail or to retailers, as the case my be,

(B) the manufacturer, producer, or importer of such article regularly sells such articles to one or more wholesale distributors in arm's length transactions and be establishes that his prices in such cases are determined without regard to any tax benefit under this paragraph, *and,*

[(C) in the case of articles upon which tax is imposed under section 4061(a) (relating to trucks, buses, tractors, etc.), the normal method of sales for such articles within the industry is not to sell such articles at retail or to retailers, or combinations thereof, and**]**

[(D)**]***(C)* the transaction is an arms-length transaction.

the tax under this chapter shall (if based on the price for which the article is sold) be computed on whichever of the following prices is the lower: (i) the price for which such article is sold, or (ii) the highest price for which such articles are sold by such manufacturer, producer, or importer to wholesale distributors.

(3) CONSTRUCTIVE SALE PRICE IN CASE OF CERTAIN ARTICLES.—Except as provided in [paragraphs (4) and (5)] *paragraph (4)*, for purposes of paragraph (1), if—

(A) the manufacturer, producer, or importer of an article regularly sells such article to a distributor which is a member of the same affiliated group of corporations (as defined in section 1504(a)) as the manufacturer, producer, or importer, and

(B) such distributor regulatoy sells such artile to one or more independent retailers, but does not regularly sell to wholesale distributors,

the constructive sale price of such article shall be 90 percent of the lowest price for which such distributor regularly sells such article in arm's-length transaction to such independent retailers. The price determined under this paragraph shall not be adjusted for any exclusion (except for the tax imposed on such article) or readjustments under subsections (a) and (e) and under section 641(b)(1). If both this paragraph and paragraph (4) apply with respect to an article, the constructive sale price for such article shall be the lower of the fair market price determined under this paragraph or paragraph (4).

(4) CONSTRUCTIVE SALE PRICE IN CASE OF CERTAIN OTHER ARTICLES.—For purposes of paragraph (1), if—

(A) the manufacturer, producer, or importer of an article regularly sells (except for tax-free sales) only to a distributor which is a member of the same affiliated group of corporations (as defined in section 1504(a)) as the manufacturer, producer, or importer,

(B) the distributor regularly sells (except for tax-free sales) such article only to retailers, and

(C) the normal method of sales for such articles within the industry by manufacturers, producers, or importer is to sell such articles in arm's-length transactions to distributors,

the constructive sale price for such article shall be the price at which such article is sold to retailers by the distributor, reduced by a percentage of such price equal to the percentage which (i) the difference between the price for which comparable articles are sold to wholesale distributors, in the ordinary course of trade, by manufacturers or producers thereof, and the price at which such wholesale distributors in arm's-length transactions sell such comparable articles to retailers, is of (ii) the price at which such wholesale distributors in arms's length transactions sell such comparable artiles to retailers. The price determined under this paragraph shall not be adjusted for any exclusion (except for the tax imposed on such article) or readjustment under subsections (a) and (e) and under section 6416(b)(1).

[(5) CONSTRUCTIVE SALE PRICE IN THE CASE OF AUTOMOBILES, TRUCKS, ETC.—In the case of articles the sale of which is taxable under section 4061(a) (relating to trucks, buses, tractors, ets.), for purposes of paragraph (1), if—

[(A) the manufacturer, producer, or importer of the article regularly sells such article to distributor which is a member of the same affiliated group of corporations (as defined in section 1504 (a)) as the manufacturer, producer, or importer, and

[(B) such distributor regularly sells such article to one or more independent retailers,

the constructive sale price of such article shall be 98½ percent of the lowest price for which such distributor regularly sells such article in arm's-length transactions to such independent retailers. The price determined under this paragraph shall not be adjusted for any exclusion (except for the tax imposed on such article) or readjustments under subsections (a) and (e) and under section 6416(b)(1).]

[(6) *(5)* DEFINITION OF LOWEST PRICE.—For purposes of paragraphs *(1), (3), and (5), (1) and (3),* the lowest price shall be determined—

(A) without requiring that any given percentage of sales be made at that price, and

(B) without including any fixed amount to which the purchaser has a right as a result of contractual arrangements existing at the time of the sale.

(e) EXCLUSION OF LOCAL ADVERTISING CHARGE FROM SALE PRICE.—

(1) EXCLUSION.—In determining, for purposes of this chapter, the price for which an article is sold, there shall be excluded a charge for local advertising (as defined in paragraph (4)) to the extent that such charge—

(A) does not exceed 5 percent of the price for which the article is sold (as determined under this section by excluding any charge for local advertising),

(B) is a separate charge made when the article is sold, and

(C) is intended to be refunded to the purchaser or any subsequent vendee in reimbursement of costs incurred for local advertising.

In the case of any such charge (or portion thereof) which is not so refunded before the first day of the fifth calendar month following the calendar year during which the article was sold, the exclusion provided by the preceding sentence shall cease to apply as of such first day.

(2) AGGREGATE AMOUNT WHICH MAY BE EXCLUDED.—In the case of articles upon the sale of which tax was imposed under the same section of this chapter—

(A) The sum of (i) the aggregate of the charges for local advertising excluded under paragraph (1), plus (ii) the aggregate of the readjustments for local advertising under section 6416(b)(1) (relating to credits or refunds for price readjustments), shall not exceed

(B) 5 percent of the aggregate of the prices (determined under this section by excluding all charges for local advertising) at which such articles were sold in sales on which tax was imposed by such section of this chapter.

The preceding sentence shall be applied to each manufacturer, producer, and importer as of the close of each calendar quarter, taking into account the items specified in subparagraphs

(A) and (B) for such calendar quarter and preceding calendar quarters in the same calendar year.

(3) NO ADJUSTMENT FOR OTHER ADVERTISING CHARGES.—Except to the extent provided by paragraphs (1) and (2), no charge or expenditure for advertising shall serve, for purposes of this section or section 6416(b)(1), as the basis for an exclusion from, or as a readjustment of, the price of any article.

(4) LOCAL ADVERTISING DEFINED.—For purposes of this section and section 6416(b)(1), the term "local advertising" means only advertising which—

(A) is initiated or obtained by the purchaser or any subsequent vendee,

(B) names the article for which the price is determinable under this section and states the location at which such article may be purchased at retail, and

(C) is broadcast over a radio station or television station or appears in a newspaper or magazine, or is displayed by means of an outdoor advertising sign or poster.

[(f) CERTAIN TRUCKS INCORPORATIING USED COMPONENTS.—For purposes of the tax imposed by section 4061(a)(1) (relating to trucks, buses, tractors, etc.), in determining the price for which an article is sold, the value of any component of such article shall be excluded from the price, if—

[(1) such component is furnished by the first user of such article, and

[(2) such component has been used prior to such furnishing.]

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SEC. 4218. USE BY MANUFACTURER OR IMPORTER CONSIDERED SALE.

(a) GENERAL RULE.—If any person manufactures, produces, or imports an article [(other than an article specified in subsection (b), (c), or (d))] *(other than a tire taxable under section 4071)* and uses it (otherwise than as material in the manufacture or production of, or as a component part of, another article taxable under this chapter to be manufactured or produced by him), then he shall be liable for tax under this chapter in the same manner as if such article were sold by him. This subsection shall not apply in the case of gasoline used by any person, for nonfuel purposes, as a material in the manufacture or production of another article to be manufactured or produced by him. For the purpose of applying the first sentence of this subsection to coal taxable under section 4121, the words "(otherwise than as material in the manufacture or production of, or as a component part of, another article taxable under this chapter to be manufactured or produced by him)" shall be disregarded.

(b) TIRES [AND TUBES.]—[Except as provided in subsection (d), if] *If* any person manufactures, produces, or imports a tire [or inner tube] taxable under section 4071, and sells it on or in connection with the sale of any article, or uses it, then he shall be liable for tax under this chapter in the same manner as if such article were sold by him.

[(c) AUTOMOTIVE PARTS AND ACCESSORIES.—If any person manufactures, produces, or imports a part or accessory taxable under section 4061(b), and uses it (otherwise than as material in the manufacture or production of, or as a componment part of any other article to be manufactured or produced by him), than he shall be liable for tax under this chapter in the same manner as if such article were sold by him.

[(d) BICYCLE TIRES AND TUBES.—If any person manufactures, produces, or imports a bicycle tire (as defined in section 4221(e)(4)(B)) or an inner tube for such a tire, and uses it (otherwise than as material in the manufacture or production of, or as a component part of, a bicycle, other than a rebuilt or reconditioned bicycle, to be manufactured or produced by him), than he shall be liable for tax under this chapter in the same manner as if such article were sold by him.]

[(e)] *(c)* COMPUTATION OF TAX.—Except as provided in section 4223(b), in any case in which a person is made liable for tax by the preceding provisions of this section, the tax (if based on the price for which the article is sold) shall be computed on the price at which such or similar articles are sold, in the ordinary course of trade, by manufacturers, producers, or importers, thereof, as determined by the Secretary.

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Subchapter G—Exemptions, Registration, Etc.

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SEC. 4221. CERTAIN TAX-FREE SALES.

(a) GENERAL RULE.—Under regulations prescribed by the Secretary, no tax shall be imposed under this chapter (other than under section 4121) on the sale by the manufacturer *(or under section 4051 on the first retail sale)* of an article—

(1) for use by the purchaser for further manufacture, or for resale by the purchaser to a second purchaser for use by such second purchaser in further manufacture,

(2) for export, or for resale by the purchaser to a second purchaser for export,

(3) for use by the purchaser as supplies for vessels or aircraft,

(4) to a State or local government for the exclusive use of a State or local government, or

(5) to a nonprofit educational organization for its exclusive use, but only if such exportation or use is to occur before any other use.

Paragraphs (4) and (5) shall not apply to section 4051, 4071, or 4081, paragraphs (4) and (5) shall not apply on and after October 1, 1988.

* * * * * * *

(c) MANUFACTURER RELIEVED FROM LIABILITY IN CERTAIN CASES.—In the case of any article sold free of tax under this section (other than a sale to which subsection (b) applies), and in the case of any article sold free of tax under section [4063(a)(6) or (7), 4063(b), 4063(e),] *4053(a)(6) or* 4083, if the manufacturer in good faith accepts a certification by the purchaser that the article will be used in accordance with the applicable provisions of law, no tax shall thereafter be imposed under this chapter in respect of such sale by such manufacturer.

(d) **Definitions.**—For purposes of this section—

(1) **Manufacturer.**—The term "manufacturer" includes a producer or importer of an article , *and, in the case of the tax imposed by section 4051, includes the retailer with respect to the first retail sale.*

(2) **Export.**—The term "export" includes shipment to a possession of the United States; and the term "exported" includes shipped to a possession of the United States.

(3) **Supplies for vessels or aircraft.**—The term "supplies for vessels or aircraft" means fuel supplies, ships' stores, sea stores, or legitimate equipment on vessels of war of the United States or of any foreign nation, vessels employed in the fisheries or in the whaling business, or vessels actually engaged in foreign trade or trade between the Atlantic and Pacific ports of the United States or between the United States and any of its possessions. For purposes of the preceding sentence, the term "vessels" includes civil aircraft employed in foreign trade or trade between the United States and any of its possessions, and the term "vessels of war of the United States or of any foreign nation" includes aircraft owned by the United States or by any foreign nation and constituting a part of the armed forces thereof.

(4) **State or local government.**—The term "State or local government" means any State, any political subdivision thereof, or the District of Columbia.

(5) **Nonprofit educational organization.**—The term "nonprofit education organization" means an educational organization described in section 170(b)(1)(A)(ii) which is exempt from income tax under section 501(a). The term also includes a school operated as an activity of an organization described in section 501(c)(3) which is exempt from income tax under section 501(a), if such school normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on.

(6) **Use in further manufacture.**—An article shall be treated as sold for use in further manufacture if—

(A) such article ❲(other than an article referred to in subparagraph (B))❳ is sold for use by the purchaser as material in the manufacture or production of, or as a component part of, another article taxable under this chapter to be manufactured or produced by him; *or*

❲(B) in the case of a part or accessory taxable under section 4061(b), such article is sold for use by the purchaser as material in the manufacture or production of, or as a component part of, another article to be manufactured or produced by him; or❳

❲(C)❳ *(B)* in the case of gasoline taxable under section 4081, such gasoline is sold for use by the purchaser, for nonfuel purposes, as a material in the manufacture or production of another article to be manufactured or produced by him.

[For purposes of subparagraph (B), the rebuilding of a part or accessory which is exempt from tax under section 4063(c) shall not constitute the manufacture or production of such part or accessory.]

(7) QUALIFIED BUS.—

(A) IN GENERAL.—The term "qualified bus" means—

(i) an intercity or local bus, and

(ii) a school bus.

(B) INTERCITY OR LOCAL BUS.—The term "intercity or local bus" means any automobile bus which is used predominantly in furnishing (for compensation) passenger land transportation available to the general public if—

(i) such transportation is scheduled and along regular routes, or

(ii) the seating capacity of such bus is at least 20 adults (not including the driver).

(C) SCHOOL BUS.—The term "school bus" means any automobile bus substantially all the use of which is in transporting students and employees of schools. For purposes of the preceding sentence, the term "school" means and educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are carried on.

(e) SPECIAL RULES.—

(1) RECIPROCITY REQUIRED IN CASE OF CIVIL AIRCRAFT.—In the case of articles sold for use as supplies for aircraft, the privileges granted under subsection (a)(3) in respect of civil aircraft employed in foreign trade or trade between the United States and any of its possessions, in respect of aircraft registered in a foreign country, shall be allowed only if the Secretary of the Treasury has been advised by the Secretary of Commerce that he has found that such foreign country allows, or will allow, substantially reciprocal privileges in respect of aircraft registered in the United States. If the Secretary of the Treasury is advised by the Secretary of Commerce that he has found that a foreign country has discontinued or will discontinue the allowance of such privileges, the privileges granted under subsection (a)(3) shall not apply thereafter in respect of civil aircraft registered in that foreign country and employed in foreign trade or trade between the United States and any of its possessions.

(2) TIRES [AND TUBES].

(A) TAX-FREE SALES.—Under regulations prescribed by the Secretary, no tax shall be imposed under section 4071 on the sale by the manufacturer of a tire [or inner tube] if—

(i) such tire [or tube] is sold for use by the purchaser for sale on or in connection with the sale of another article manufactured or produced by such purchaser; and

(ii) such other article is to be sold by such purchaser in a sale which either will satisfy the requirements of paragraph (2), (3), (4), or (5) of subsection (a) for a tax-free sale, or would satisfy such requirements but for the fact that such other article is not subject to tax under this chapter.

(B) Proof.—Where a tire [or tube] has been sold free of tax under this paragraph, this paragraph shall cease to apply unless, within the 6-month period which begins on the date of the sale by him (or, if earlier, on the date of the shipment by him), the manufacturer of such tire [or tube] receives proof that the other article referred to in clause (ii) of subparagraph (A) has been sold in a manner which satisfies the requirements of such clause (ii) (including in the case of a sale for export, proof of export of such other article).

(C) Subsection (a)(1) does not apply.—Paragraph (1) of subsection (a) shall not apply with respect to the tax imposed under section 4071 on the sale of a tire [or inner tube.]

(4) Bicycle tires or tubes sold to bicycle manufacturer.—

[(A) In general.—Under regulations prescribed by the Secretary, no tax shall be imposed under section 4071 on the sale of a bicycle tire (or an inner tube for such a tire) by the manufacturer thereof if such tire or tube is sold for use by the purchaser as material in the manufacture or production of, or as a component part of, a bicycle (other than a rebuilt or reconditioned bicycle).

[(B) Bicycle tire defined.—As used in this paragraph the term "bicycle tire" means a tire, composed of rubber in combination with fabric or other reinforcing element, which is not more than 28 inches in outer diameter and not more than 2¼ inches in cross section and which is primarily designed or adapted for use on bicycles.

[(C) Proof.—Where a bicycle tire or tube has been sold free of tax under this paragraph, this paragraph shall cease to apply unless, within the 6-month period which begins on the date of the sale by him (or, if earlier, on the date of shipment by him), the manufacturer of such bicycle tire or tube receives proof that the tire or tube has been used in the manner described in subparagraph (A).

[(5) Tires, tubes, and tread rubber used on intercity, local and school buses.—Under regulations prescribed by the Secretary—

[(A) the taxes imposed by paragraphs (1) and (3) of section 4071(a) shall not apply in the case of tires or inner tubes for tires sold for use by the purchaser on or in connection with a qualified bus, and

[(B) the tax imposed by paragraph (4) of section 4071(a) shall not apply in the case of tread rubber sold for use by the purchaser in the recapping or retreading of any tire to be used by the purchaser on or in connection with a qualified bus.

[(6) Bus parts and accessories.—Under regulations prescribed by the Secretary, the tax imposed by section 4061(b) shall not apply to any part or accessory which is sold for use by the purchaser on or in connection with an automobile bus, or is to be resold by the purchaser or a second purchaser for such use.]

(3) TIRES USED ON INTERCITY, LOCAL, AND SCHOOL BUSES.—Under regulations prescribed by the Secretary, the tax imposed by section 4071 shall not apply in the case of tires sold for use by the purchaser on or in connection with a qualified bus.

SEC. 4222. REGISTRATION.

(a) GENERAL RULE.—Except as provided in subsection (b), section 4221 shall not apply with respect to the sale of any article unless the manufacturer, the first purchaser, and the second purchaser (if any) are all registered under this section. Registration under this section shall be made at such time, in such manner and form, and subject to such terms and conditions, as the Secretary may by regulations prescribe. A registration under this section may be used only in accordance with regulations prescribed under this section.

(b) EXCEPTIONS.—

(1) PURCHASES BY STATE AND LOCAL GOVERNMENTS.—Subsection (a) shall not apply to any State or local government in connection with the purchase by it of any article if such State or local government complies with such regulations relating to the use of exemption certificates in lieu of registration as the Secretary shall prescribe to carry out the purpose of this paragraph.

(2) EXPORT.—Subject to such regulations as the Secretary may prescribe for the purpose of this paragraph, in the case of any sale or resale for export, the Secretary may relieve the purchaser or the second purchaser, or both, from the requirement of registering under this section.

(3) CERTAIN PURCHASES AND SALES BY THE UNITED STATES.—Subsection (a) shall apply to purchases and sales by the United States only to the extent provided by regulations prescribed by the Secretary.

(5) SUPPLIES FOR VESSELS OR AIRCRAFT.—Subsection (a) shall not apply to a sale of an article for use by the purchaser as supplies for any vessel or aircraft if such purchaser complies with such regulations relating to the use of exemption certificates in lieu of registration as the Secretary shall prescribe to carry out the purpose of this paragraph.

(c) REVOCATION OR SUSPENSION OF REGISTRATION.—Under regulations prescribed by the Secretary, the registration of any person under this section may be revoked or suspended if the Secretary determines—

(1) that such person has used such registration to avoid the payment of any tax imposed by this chapter, or to postpone or in any manner to interfere with the collection of any such tax, or

(2) that such revocation or suspension is necessary to protect the revenue.

The revocation or suspension under this subsection shall be in addition to any penalty provided by law for any act or failure to act.

(d) REGISTRATION IN THE CASE OF CERTAIN OTHER EXEMPTIONS.—The provisions of this section may be extended to, and made applicable with respect to, the exemptions provided by sections

[4063(a)(7), 4063(b), 4063(e),] *4053(a)(6),* 4064(b)(1)(C), 4083, and 4182(b), and the exemptions authorized under section 4293 in respect of the taxes imposed by this chapter, to the extent provided by regulations prescribed by the Secretary.

(e) DEFINITIONS.—Terms used in this section which are defined in section 4221(d) shall have the meaning given to them by section 4221(d).

SEC. 4223. SPECIAL RULES RELATING TO FURTHER MANUFACTURE.

(a) PURCHASING MANUFACTURER TO BE TREATED AS THE MANUFACTURER.—For purposes of this chapter, a manufacturer or producer to whom an article is sold or resold free of tax under section 4221(a)(1) for use by him in further manufacture shall be treated as the manufacturer or producer of

(b) COMPUTATION OF TAX.—If the manufacturer or producer referred to in subsection (a) incurs liability for tax under this chapter on his sale or use of an article referred to in subsection (a) and the tax is based on the price for which the article is sold, the article shall be treated as having been sold by him—

(1) at the price for which the article was sold by him (or, where the tax is on his use of the article, at the price referred to in section [4218(e)] *4218(c)); or*

(2) if he so elects and establishes such price to the satisfaction of the Secretary—

(A) at the price for which the article was sold to him; or

(B) at the price for which the article was sold by the person who (without regard to subsection (a)) is the manufacturer, producer, or importer of such article.

For purposes of this subsection, the price for which the article was sold shall be determined as provided in section 4216. For purposes of paragraph (2) no adjustment or readjustment shall be made in such price by reason of any discount, rebate, allowance, return or repossession of a container or covering, or otherwise. An election under paragraph (2) shall be made in the return reporting the tax applicable to the sale or use of the article, and may not be revoked.

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SEC. 4227. CROSS REFERENCES.

(1) For exemption for a sale to an Indian tribal government (or its subdivision) for the exclusive use of an Indian tribal government (or its subdivision), see section 7871.

(2) For credit for taxes on tires [and tubes,], see section 6416(c).

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CHAPTER 34--POLICIES ISSUED BY FOREIGN INSURERS

Sec. 4371. Imposition of tax.
Sec. 4372. Definitions.
Sec. 4373. Exemptions.
Sec. 4374. Liability for tax.

SEC. 4371. IMPOSITION OF TAX.

There is hereby imposed, on each policy of insurance, indemnity bond, annuity contract, or policy of reinsurance issued by any foreign insurer or reinsurer, a tax at the following rates:

(1) CASUALTY INSURANCE AND INDEMNITY BONDS.—4 cents on each dollar, or fractional part thereof, of the premium paid on the policy of casualty insurance or the indemnity bond, if issued to or for, or in the name of, an insured as defined in section 4372(d);

(2) LIFE INSURANCE, SICKNESS AND ACCIDENT POLICIES, AND ANNUITY CONTRACTS.—1 cent on each dollar, or fractional part thereof, of the premium paid on the policy of life, sickness, or accident insurance, or annuity contract, unless the insurer is subject to tax under section [819] *813*; and

(3) REINSURANCE.—1 cent on each dollar, or fractional part thereof, of the premium paid on the policy of reinsurance covering any of the contracts taxable under paragraph (1) or (2).

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CHAPTER 36—CERTAIN OTHER EXCISE TAXES

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Subchapter D—Tax on Use of Certain Vehicles

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SEC. 4481. IMPOSITION OF TAX.

(a) IMPOSITION OF TAX.—A tax is hereby imposed on the use of any highway motor vehicle which (together with the semitrailers and trailers customarily used in connection with highway motor vehicles of the same type as such highway motor vehicle) has a taxable gross weight of more than 26,000 pounds, at the rate of $3.00 a year for each 1,000 pounds of taxable gross weight or fraction thereof. [In the case of the taxable period beginning on July 1, 1984, and ending on September 30, 1984, the tax shall be at the rate of 75 cents for such period for each 1,000 pounds of taxable gross weight or fraction thereof.]

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CHAPTER 42—PRIVATE FOUNDATIONS; BLACK LUNG BENEFIT TRUSTS

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Subchapter A—Private Foundations

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SEC. 4940. EXCISE TAX BASED ON INVESTMENT INCOME.

(a) TAX-EXEMPT FOUNDATIONS.—* * *

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(d) Exemption for Certain Operating Foundations.—

(1) In general.—No tax shall be imposed by this section on any private foundation which is an exempt operating foundation for the taxable year.

(2) Exempt operating foundation.—For purposes of this subsection, the term "exempt operating foundation" means, with respect to any taxable year, any private foundation if—

(A) such foundation is an operating foundation (as defined in section 4942(j)(3)),

(B) such foundation has been publicly supported for at least 10 taxable years,

(C) at all times during the taxable year, the governing body of such foundation—

(i) consists of individuals at least 75 percent of whom are not disqualified individuals, and

(ii) is broadly representative of the general public, and

(D) at no time during the taxable year does such foundation have an officer who is a disqualified individual.

(3) Definitions.—For purposes of this subsection—

(A) Publicly supported.—A private foundation is publicly supported for a taxable year if it meets the requirements of section 170(b)(1)(A)(vi) or 509(a)(2) for such taxable year.

(B) Disqualified individual.—The term "disqualified individual" means, with respect to any private foundation, an individual who is—

(i) a substantial contributor to the foundation,

(ii) an owner of more than 20 percent of—

(I) the total combined voting power of a corporation,

(II) the profits interest of a partnership, or

(III) the beneficial interest of a trust or unincorporated enterprise,

which is a substantial contributor to the foundation, or

(iii) a member of the family of any individual described in clause (i) or (ii).

(C) Substantial contributor.—The term "substantial contributor" means a person who is described in section 507(d)(2).

(D) Family.—The term "family" has the meaning given to such term by section 4946(d).

(E) Constructive ownership.—The rules of paragraphs (3) and (4) of section 4946(a) shall apply for purposes of subparagraph B(ii).

(e) Reduction in Tax Where Private Foundation Meets Certain Distribution Requirements.—

(1) In general.—In the case of any private foundation which meets the requirements of paragraph (2) for any taxable year, subsection (a) shall be applied with respect to such taxable year by substituting "1 percent" for "2 percent."

(2) Requirements.—A private foundation meets the requirements of this paragraph for any taxable year if—

(A) the amount of the qualifying distributions made by the private foundation during such taxable year equals or exceeds the sum of—

(i) an amount equal to the assets of such foundation for such taxable year multiplied by the average percentage payout for the base period, plus

(ii) 1 percent of the net investment income of such foundation for such taxable year, and

(B) the average percentage payout for the base period equals or exceeds 5 percent.

In the case of an operating foundation (as defined in section 4942(j)(3)), subparagraph (B) shall be applied by substituting "3⅓ percent" for "5 percent".

(3) AVERAGE PERCENTAGE PAYOUT FOR BASE PERIOD.—For purposes of this subsection—

(A) IN GENERAL.—The average percentage payout for the base period is the average of the percentage payouts for taxable years in the base period.

(B) PERCENTAGE PAYOUT.—The term "percentage payout" means, with respect to any taxable year, the percentage detemined by dividing—

(i) the amount of the qualifying distributions made by the private foundation during the taxable year, by

(ii) the assets of the private foundation for the taxable year.

(C) SPECIAL RULE WHERE TAX REDUCED UNDER THIS SUBSECTION.—For purposes of this paragraph, if the amount of the tax imposed by this section for any taxable year in the base period is reduced by reason of this subsection, the amount of the qualifying distributions made by the private foundation during such year shall be reduced by the amount of such reduction in tax.

(4) BASE PERIOD.—For purposes of this subsection—

(A) IN GENERAL.—The term "base period" means, with respect to any taxable year, the 5 taxable years preceding such taxable year.

(B) NEW PRIVATE FOUNDATIONS, ETC.—If an organization has not been a private foundation throughout the base period referred to in subparagraph (A), the base period shall consist of the taxable years during which such foundation has been in existence.

(5) OTHER DEFINITIONS.—For purposes of this subsection—

(A) QUALIFYING DISTRIBUTION.—The term "qualifying distribution" has the meaning given such term by section 4942(g).

(B) ASSETS.—The assets of a private foundation for any taxable year shall be treated as equal to the excess determined under section 4942(e)(1).

(6) TREATMENT OF SUCCESSOR ORGANIZATIONS, ETC.—In the case of—

(A) a private foundation which is a successor to another private foundation, this subsection shall be applied with respect to such successor by taking into account the experience of such other foundation, and

(B) a merger, reorganization, or division of a private foundation, this subsection shall be applied under regulations prescribed by the Secretary.

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SEC. 4942. TAXES ON FAILURE TO DISTRIBUTE INCOME.

(a) INITIAL TAX.—There is hereby imposed on the undistributed income of a private foundation for any taxable year, which has not been distributed before the first day of the second (or any succeeding) taxable year following such taxable year (if such first day falls within the taxable period), a tax equal to 15 percent of the amount of such income remaining undistributed at the beginning of such second (or succeeding) taxable year. The tax imposed by this subsection shall not apply to the undistributed income of a private foundation—

(1) for any taxable year for which it is an operating foundation (as defined in subsection (j)(3)), or

(2) to the extent that the foundation failed to distribute any amount solely because of an incorrect valuation of assets under subsection (e), if—

(A) the failure to value the assets properly was not willful and was due to reasonable cause,

(B) such amount is distributed as qualifying distributions (within the meaning of subsection (g)) by the foundation during the allowable distribution period (as defined in subsection [(j)(4)] *(j)(2)),*

(C) the foundation notifies the Secretary that such amount has been distributed (within the meaning of subparagraph (B)) to correct such failure, and

(D) such distribution is treated under subsection (h)(2) as made out of the undistributed income for the taxable year for which a tax would (except for this paragraph) have been imposed under this subsection.

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(d) DISTRIBUTABLE AMOUNT.—For purposes of this section, the term "distributable amount" means, with respect to any foundation for any taxable year, an amount equal to—

[(1) the minimum investment return, reduced by]

(1) the sum of the minimum investment return plus the amounts described in subsection (f)(2)(C), reduced by

(2) the sum of the taxes imposed on such private foundation for the taxable year under subtitle A and section 4940.

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(f) ADJUSTED NET INCOME.—

(1) DEFINED.—For purposes of subsection [(d),] *(j),* the term "adjusted net income" means the excess (if any) of—

(A) the gross income for the taxable year (determined with the income modifications provided by paragraph (2)), over

(B) the sum of the deductions (determined with the deduction modifications provided by paragraph (3)) which would be allowed to a corporation subject to the tax imposed by section 11 for the taxable year.

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(g) QUALIFYING DISTRIBUTIONS DEFINED.—

(1) IN GENERAL.— * * *

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(4) LIMITATION ON ADMINISTRATIVE EXPENSES ALLOCABLE TO MAKING OF CONTRIBUTIONS, GIFTS, AND GRANTS.—

(A) IN GENERAL.—The amount of the grant administrative expenses paid during any taxable year which may be taken into account as qualifying distributions shall not exceed the excess (if any) of—

(i) 15 percent of the aggregate amount of qualified grants made by the private foundation during such taxable year and the immediately preceding 4 taxable years, over

(ii) the aggregate amount of grant administrative expenses paid during the 4 preceding taxable years which were taken into account as qualified distributions.

(B) GRANT ADMINISTRATIVE EXPENSES.—For purposes of this paragraph, the term "grant administrative expenses" means any administrative expenses which are allocable to the making of qualified grants.

(C) QUALIFIED GRANTS.—For purposes of this paragraph, the term "qualified grant" means any contribution, gift, or grant which is a qualifying distribution.

(D) TRANSITIONAL RULE.—In the case of any preceding taxable year which began before January 1, 1984, the amount of the grant administrative expenses taken into account under subparagraph (A)(ii) shall not exceed 15 percent of the qualified grants made by the foundation during such taxable year.

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SEC. 4943. TAXES ON EXCESS BUSINESS HOLDINGS.

(a) INITIAL TAX.—* * *

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(c) EXCESS BUSINESS HOLDINGS.—For purposes of this section—

(1) IN GENERAL.—* * *

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(4) PRESENT HOLDINGS.—

(A)(i) In applying this section with respect to the holdings of any private foundation in a business enterprise, if such foundation and all disqualified persons together have holdings in such enterprise in excess of 20 percent of the voting stock on May 26, 1969, the precentage of such holdings shall be substituted for "20 percent," and for "35 percent" (if the percentage of such holdings is greater than 35 percent), wherever it appears in paragraph (2), but in no event shall the percentage so substituted be more than 50 percent.

(ii) If the percentage of the holdings of any private foundation and all disqualified persons together in a business enterprise (or if the percentage of the holdings of the private foundation in such enterprise) decreases for any reason, clause (i) and subparagraph (D) shall, except as provided in the next sentence, be applied for all periods after such decrease by substituting such decreased percentage for the percentage held on May 26, 1969, but in no event shall the percentage substituted be less than 20 percent. [For purposes of this clause, any decrease in percentage holdings attributable to issuances of stock (or to issuances of stock coupled with redemptions of stock) shall be determined only as of the close of each taxable year of the private foundation unless the aggregate of the percentage decreases attributable to the issuances of stock (or such issuances and redemptions) during such taxable year equals or exceeds 1 percent.]

For purposes of the preceding sentence, any decrease in percentage holdings attributable to issuances of stock (or to issuances of stock coupled with redemptions of stock) shall be disregarded so long as—

(I) the net percentage decrease disregarded under this sentence does not exceed 2 percent, and

(II) the number of shares held by the foundation is not affected by any such issuance or redemption.

(iii) The percentage substituted under clause (i), and any percentage substituted under subparagraph (D), shall be applied both with respect to the voting stock and, separately, with respect to the value of all outstanding shares of all classes of stock.

(iv) In the case of any merger, recapitalization, or other organization involving one or more business enterprises, the application of clauses (i), (ii), and (iii) shall be determined under regulations prescribed by the Secretary.

(B) Any interest in a business enterprise which a private foundation holds on May 26, 1969, if the private foundation on such date has excess business holdings, shall (while held by the foundation) be treated as held by a disqualified person (rather then by the private foundation)—

(i) during the 20-year period beginning on such date, if the private foundation [has] *and all disqualified persons have* more then a 95 percent voting stock interest on such date.

(ii) except as provided in clause (i), during the 15-year period beginning on such date, if the foundation and all disqualified persons have more than a 75 percent voting stock interest (or more than a 75 percent profits or beneficial interest in the case of any unincorporated enterprise) on such date or more than a 75 percent interest in the value of all outstanding shares of all classes of stock (or more than a 75 percent capital interest in the case of a partnership or joint venture) on such date, or

(iii) during the 10-year period beginning on such date, in any other case.

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(6) 5-YEAR PERIOD TO DISPOSE OF GIFTS, BEQUESTS, ETC.—Except as provided in paragraph (5), if, after May 26, 1969, there is a change in the holdings in a business enterprise (other than by purchase by the private foundation or by a disqualified person) which causes the private foundation to have—

(A) excess business holdings in such enterprise, the interest of the foundation in such enterprise (immediately after such change) shall (while held by the foundation) be treated as held by a disqualified person (rather than by the foundation) during the 5-year period beginning on the date of such change in holdings; or

(B) an increase in excess business holdings in such enterprise (determined without regard to subparagraph (A)), subparagraph (A) shall apply, except that the excess holdings immediately preceding the increase therein shall not be treated, solely because of such increase, as held by a disqualified person (rather than by the foundation).

In any case where an acquisition by a disqualified person would result in a substitution under clause (i) or (ii) of subparagraph (D) of paragraph (4), the preceding sentence shall be applied with respect to such acquisition as if it did not contain the phrase "or by a disqualified person" in the material preceding subparagraph (A).

(7) 5-YEAR EXTENSION OF PERIOD TO DISPOSE OF CERTAIN LARGE GIFTS AND BEQUESTS.—The Secretary may extend for an additional 5-year period the period under paragraph (6) for disposing of excess business holdings in the case of an unusually large gift or bequest of diverse business holdings or holdings with complex corporate structures if the foundation—

(A) establishes that—

(i) diligent efforts to dispose of such holdings have been made within the initial 5-year period, and

(ii) disposition within the initial 5-year period has not been possible (except at a price substantially below fair market value) by reason of such size and complexity or diversity of such holdings, and

(B) before the close of the initial 5-year period, has submitted a plan to the Secretary for disposing of all of the excess business holdings involved in the extension which can reasonably be expected to be carried out before the close of the extension period.

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SEC. 4945. TAXES ON TAXABLE EXPENDITURES.

(a) INITIAL TAXES.—* * *

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(d) TAXABLE EXPENDITURE.—For purposes of this section, the term "taxable expenditure" means any amount paid or incurred by a private foundation—

(1) to carry on propaganda, or otherwise to attempt, to influence legislation, within the meaning of subsection (e),

(2) except as provided in subsection (f), to influence the outcome of any specific public election, or to carry on, directly or indirectly, any voter registration drive,

(3) as a grant to an individual for travel, study, or other similar purposes by such individual, unless such grant satisfies the requirements of subsection (g),

[(4) as a grant to an organization (other than an organization described in paragraph (1), (2), or (3) of section 509(a)), unless the private foundation excercise expenditure responsibility with respect to such grant in accordance with subsection (h), or]

(4) as a grant to an organization unless—

(A) such organization is described in paragraph (1), (2), or (3) of section 509(a) or is an exempt operating foundation (as defined in section 4940(d)(2)), or

(B) the private foundation exercises expenditure responsibility with respect to such grant in accordance with subsection (h), or

* * * * * * *

(f) NONPARTISAN ACTIVITIES CARRIED ON BY CERTAIN ORGANIZATIONS.—Subsection (d)(2) shall not apply to any amount paid or incurred by any organization—

(1) which is described in section 501(c)(3) and exempt from taxation under section 501(a),

[(2) the activities of which are nonpartisan, are not confined to one specific election period, and are carried on in 5 or more States,]

(2) the activities of which are nonpartisan and are not confined to 1 specific election period,

(3) substantially all of the income of which is expended directly for the active conduct of the activities constituting the purpose or function for which it is organized and operated,

(4) substantially all of the support (other than gross investment income as defined in section 509(e)) of which is received from exempt organizations, the general public, governmental units described in section 170(c)(1), or any combination of the foregoing; not more than 25 percent of such support is reveived from any one exempt organization (for this purpose treating private foundations which are described in section 4946(a)(1)(H) with respect to each other as one exempt organization); and not more than half of the support of which is received from gross investment income, and

(5) contributions to which for voter registration drives are not subject to conditions that they may be used only in specified States, possessions of the United States, or political subdivisions or other areas of any of the foregoing, or the District of Columbia, or that they may be used in only one specific election period.

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SEC. 4946. DEFINITIONS AND SPECIAL RULES.

(a) DISQUALIFIED PERSON.—* * *

* * * * * * *

[(d) MEMBERS OF FAMILY.—For purposes of subsection (a)(1), the family of any individual shall include only his spouse, ancestors, lineal descendants, and spouses of lineal descendants.]

(d) MEMBERS OF FAMILY.—For purposes of subsection (a)(1), the family of any individual shall include only his spouse, ancestors, children, grandchildren, great grandchildren, and the spouses of children, grandchildren, and great grandchildren.

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[Subchapter C—Abatement of Second Tier Taxes Where There Is Correction During Correction Period]

Subchapter C—Abatement of First and Second Tier Taxes in Certain Cases

Sec. 4961. Abatement of second tier taxes where there is correction.
[Sec. 4962. Definitions.]
Sec. 4962. Abatement of private foundation first tier taxes in certain cases.
Sec. 4963. Definitions.

* * * * * * *

SEC. 4962. ABATEMENT OF PRIVATE FOUNDATION FIRST TIER TAXES IN CERTAIN CASES.

(a) GENERAL RULES.—If it is established to the satisfaction of the Secretary that—

(1) a taxable event was due to reasonable cause and not to willful neglect, and

(2) such event was corrected within the correction period for such event,

then any private foundation first tier tax imposed with respect to such event (including interest) shall not be assessed and, if assessed, the assessment shall be abated and, if collected, shall be credited or refunded as an overpayment.

(b) PRIVATE FOUNDATION FIRST TIER TAX.—For purposes of this section, the term "private foundation first tier tax" means any first tier tax imposed by subchapter A of chapter 42, except that such term shall not include the tax imposed by section 4941 (relating to initial tax on self-dealing).

SEC. [4962.] *4963*. DEFINITIONS.

(a) FIRST TIER TAX.—For purposes of this subchapter, the term "first tier tax" means any tax imposed by subsection (a) of section 4941, 4942, 4943, 4944, 4945, 4951, 4952, 4971, or 4975.

(b) SECOND TIER TAX.—For purposes of this subchapter, the term "second tier tax" means any tax imposed by subsection (b) of section 4941, 4942, 4943, 4944, 4945, 4951, 4952, 4971, or 4975.

(c) TAXABLE EVENT.—For purposes of this subchapter, the term "taxable event" means any act (or failure to act) giving rise to liability for tax under section 4941, 4942, 4943, 4944, 4945, 4951, 4952, 4971, or 4975.

(d) CORRECT.—For purposes of this subchapter—

(1) In general.—Except as provided in paragraph (2), the term "correct" has the same meaning as when used in the section which imposes the second tier tax.

(2) Special rules.—The term "correct" means—

(A) in the case of the second tier tax imposed by section 4942(b), reducing the amount of the undistributed income to zero,

(B) in the case of the second tier tax imposed by section 4943(b), reducing the amount of the exces business holdings to zero, and

(C) in the case of the second tier tax imposed by section 4944, removing the investment from jeopardy.

(e) Correction Period.—For purposes of this subchapter—

(1) In general.—The term "correction period" means, with respect to any taxable event, the period beginning on the date on which such event occurs and ending 90 days after the date of mailing under section 6212 of a notice of deficiency with respect to the second tier tax imposed on such taxable event, extended by—

(A) any period of which a deficiency cannot be assessed under section 6213(a) (determined without regard to the last sentence of section 4961(b)), and

(B) any other period which the Secretary determines is reasonable and necessary to bring about correction of the taxable event.

(2) Special rules for when taxable event occurs.—For purposes of paragraph (1), the taxable event shall be treated as occurring—

(A) in the case of section 4942, on the first day of the taxable year for which there was a failure to distribute income,

(B) in the case of section 4943, on the first day on which there are excess business holdings,

(C) in the case of section 4971, on the last day of the plan year in which there is an accumulated funding deficiency, and

(D) in any other case, the date on which such event occurred.

CHAPTER 43—QUALIFIED PENSION, ETC., PLANS

Sec. 4971. Taxes on failure to meet minimum funding standards.
Sec. 4972. Tax on excess contributions for self-employed individuals.
Sec. 4973. Tax on excess contributions to individual retirement accounts, certain 403(b) contracts, **[**certain individual retirement annuities, certain retirement bonds**]** *and certain individual retirement annuities.*
Sec. 4974. Tax on certain accumulations in individual retirement accounts.
Sec. 4975. Tax on prohibited transactions.

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SEC. 4972. TAX ON EXCESS CONTRIBUTIONS FOR SELF-EMPLOYED INDIVIDUALS.

(a) Tax Imposed.—In the case of a plan which provides contributions or benefits for employees some or all of whom are employees within the meaning of section 401(c)(1), there is imposed, for each taxable year of the employer who maintains such plan, a tax in an amount equal to 6 percent of the amount of the excess contributions under the plan (determined as of the close of the taxable year). The tax imposed by this subsection shall be paid by the employer who maintains the plan. [This section applies only to plans which include a trust described in section 401(a), which are described in section 403(a), or which are described in section 405(a).] *This section applies only to plans which include a trust described in section 401(a) or which are described in section 403(a).*

* * * * * * *

SEC. 4973. TAX ON EXCESS CONTRIBUTIONS TO INDIVIDUAL RETIREMENT ACCOUNTS, CERTAIN SECTION 403(b) CONTRACTS, [CERTAIN INDIVIDUAL RETIREMENT ANNUITIES, AND CERTAIN RETIREMENT BONDS] *AND CERTAIN INDIVIDUAL RETIREMENT ANNUITIES.*

(a) TAX IMPOSED.—In the case of—

(1) an individual retirement account (within the meaning of section 408(a)), *or*

(2) an individual retirement annuity (within the meaning of section 408(b)), a custodial account treated as an annuity contract under section 403(b)(7)(A) (relating to custodial accounts for regulated investment company stock, [or]

[(3) a retirement bond (within the meaning of section 409), established for the benefit of any individual,]

there is imposed for each taxable year a tax in an amount equal to 6 percent of the amount of the excess contributions to such individual's accounts, [annuities, or bonds] *or annuities* (determined as of the close of the taxable year). The amount of such tax for any taxable year shall not exceed 6 percent of the value of the account, [annuity, or bond] *or annuity* (determined as of the close of the taxable year). In the case of an endowment contract described in section 408(b), the tax imposed by this section does not apply to any amount allocable to life, health, accident, or other insurance under such contract. The tax imposed by this subsection shall be paid by such individual.

(b) EXCESS CONTRIBUTIONS.—For purposes of this section, in the case of individual retirement accounts, individual retirement annuities or bonds, the term "excess contributions" means the sum of—

(1) the excess (if any) of—

(A) the amount contributed for the taxable year to the accounts or for the annuities or bonds (other than a rollover contribution described in sections 402(a)(5), 402(a)(7), 403(a)(4), 403(b)(8), [408(d)(3), and 409(b)(3)(C)] *and 408(d)(3)*), over

[(B) the amount allowable as a deduction under section 219 for such contributions, and]

(B) the sum of the amount allowable as a deduction under section 219 for such contributions plus the nondeductible limit for the taxable year, and

(2) the amount determined under this subsection for the preceding taxable year, reduced by the sum of—

(A) the distributions out of the account for the taxable year which were included in the gross income of the payee under section 408(d)(1),

(B) the distributions out of the account for the taxable year to which section 408(d)(5) applies, and

[(C) the excess (if any) of the maximum amount allowable as a deduction under section 219 for the taxable year over the amount contributed (determined without regard to section 219(f)(6)) to the accounts or for the annuities or bonds for the taxable year.]

(C) the excess (if any) of—

(i) the sum of the maximum amount allowable as a deduction under section 219 for the taxable year plus the nondeductible limit for the taxable year, over

(ii) the amount contributed (determined without regard to section 219(e)(6)) to the accounts or for the annuities for the taxable year.

For purposes of this subsection, any contribution which is distributed from the individual retirement account[, individual retirement annuity, or bond] *or the individual retirement annuity* in a distribution to which section 408(d)(4) applies shall be treated as an amount not contributed.

(c) Section 403(b) Contracts.—For purposes of this section, in the case of a custodial account referred to in subsection (a)(2), the term "excess contributions" means the sum of—

(1) the excess (if any) of the amount contributed for the taxable year to such account (other than a rollover contribution described in section 403(b)(8) [, 408(d)(3)(A)(iii), or 409(b)(3)(C)] *or 408(d)(3)(A)(iii),* over the lesser of the amount excludable from gross income under section 403(b) or the amount permitted to be contributed under the limitations contained in section 415 (or under whichever such section is applicable, if only one is applicable), and

(2) the amount determined under this subsection for the preceding taxable year, reduced by—

(A) the excess (if any) of the lesser of (i) the amount excludable from gross income under section 403(b) or (ii) the amount permitted to be contributed under the limitations contained in section 415 over the amount contributed to the account for the taxable year (or under whichever such section is applicable, if only one is applicable), and

(B) the sum of the distributions out of the account (for all prior taxable years) which are included in gross income under section 72(e).

(d) Nondeductible Limit.—

(1) In general.—For purposes of subsection (b), the term "nondeductible limit" means whichever of the following is the least:

(A) $1,750,

(B) the excess of—

(i) the compensation (as defined in section 219(e)(1)) includible in the individual's gross income for the taxable year, over

(ii) the maximum amount allowable as a deduction under section 219 for such taxable year to the individual, or

(C) the amount of the designated nondeductible contributions for the taxable year.

(2) DESIGNATED NONDEDUCTIBLE CONTRIBUTION.—

(A) IN GENERAL.—For purposes of paragraph (1), the term "designated nondeductible contribution" means any contribution to an individual retirement plan for the taxable year which is designated as a nondeductible contribution.

(B) DESIGNATION.—Any designation under subparagraph (A) may be made (or revoked) at any time before the last day prescribed by law for filing the return of tax imposed by subtitle A for the taxable year (including extensions thereof).

(3) SPECIAL RULE FOR SPOUSAL IRA.—In the case of an individual to whom a deduction is allowable under section 219(c) for any taxable year, the nondeductible limit for such year shall be determined by reference to such individual's compensation and shall be allocated between the spouses in such manner as they may designate.

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SEC. 4975. TAX ON PROHIBITED TRANSACTIONS.

(a) INITIAL TAXES ON DISQUALIFIED PERSON.—* * *

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(d) EXEMPTIONS.—The prohibitions provided in subsection (c) shall not apply to—

(1) any loan made by the plan to a disqualified person who is a participant or beneficiary of the plan if such loan—

(A) is available to all such participants or beneficiaries on a reasonably equivalent basis,

(B) is not made available to highly compensated employees, officers, or shareholders in an amount greater than the amount made available to other employees,

(C) is made in accordance with specific provisions regarding such loans set forth in the plan,

(D) bears a reasonable rate of interest, and

(E) is adequately secured;

* * * * * * *

(14) any transaction required or permitted under part 1 of subtitle E of title IV or section 4223 of the Employee Retirement Income Security Act of 1974, but this paragraph shall not apply with respect to the application of subsection (c)(1)(E) or (F); or

(15) a merger of multiemployer plans, or the transfer of assets or liabilities between multiemployer plans, determined by the Pension Benefit Guaranty Corporation to meet the requirements of section 4231 of such Act, but this paragraph shall not apply with respect to the application of subsection (c)(1)(E) or (F).

The exemptions provided by this section (other than paragraphs (9) and (12)) shall not apply to any transaction with respect to a trust described in section 401(a) which is part of a plan providing contributions or benefits for employees some or all of whom are owner-employees (as defined in section 401(c)(3)) in which a plan directly or indirectly lends any part of the corpus or income of the plan to, pays any compensation for personal services rendered to the plan to, or acquires for the plan any property from or sells any property to, any such owner-employee, a member of the family (as defined in section 267(c)(4)) of any such owner-employee, or a corporation controlled by any such owner-employee through the ownership, directly or indirectly, of 50 percent or more of the total combined voting power of all classes of stock entitled to vote or 50 percent or more of the total value of shares of all classes of stock of the corporation. For purposes of the preceding sentence, a shareholder-employee (as defined in section 1379, as in effect on the day before the date of the enactment of the Subchapter S Revision Act of 1982, a participant or beneficiary of an individual retirement account[, individual retirement annuity, or an individual retirement bond (as defined in section 408 or 409)] *or an individual retirement annuity (as defined in section 408),* and an employer or association of employees which establishes such an account or annuity under section 408(c) shall be deemed to be an owner-employee.

(e) DEFINITIONS.—

(1) PLAN.—For purposes of this section, the term "plan" means a trust described in section 401(a) which forms a part of a plan, or a plan described in section 403(a) [or 405(a),] which trust or plan is exempt from tax under section 501(a), an individual retirement account described in section 408(a) or an individual retirement annuity described in section 408(b) [or a retirement bond described in section 409] (or a trust, plan, account, [annuity, or bond] *or annuity* which, at any time, has been determined by the Secretary to be such a trust, plan, [account, or bond] *or account*).

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(7) EMPLOYEE STOCK OWNERSHIP PLAN.—The term "employee stock ownership plan" means a defined contribution plan—

(A) which is a stock bonus plan which is qualified, or a stock bonus and a money purchase plan both of which are qualified under section 401(a) and which are designed to invest primarily in qualifying employer securities; and

(B) which is otherwise defined in regulations prescribed by the Secretary.

A plan shall not be treated as an employee stock ownership plan unless it meets the requirements of section [409A(h)] *409(h)* and, if the employer has a registration-type class of securities (as defined in section [409A(e)(4)] *409(e)(4)*, it meets the requirements of section [409A(e)] *409(e)*.

(8) QUALIFYING EMPLOYER SECURITY.—The term "qualifying employer security" means an employer security within the meaning of section [409A(l)] *409(l)*.

If any moneys or other property of a plan are invested in shares of an investment company registered under the Investment Company Act of 1940, the investment shall not cause that investment company or that investment company's investment adviser or principal underwriter to be treated as a fiduciary or a disqualified person for purposes of this section, except when an investment company or its investment adviser or principal underwriter acts in connection with a plan covering employees of the investment company, its investment adviser, or its principal underwriter.

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Subtitle E—Alcohol, Tobacco, and Certain Other Excise Taxes

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CHAPTER 51—DISTILLED SPIRITS, WINES, AND BEER

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Subchapter A—Gallonage and Occupational Taxes

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PART I—GALLONAGE TAXES

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Subpart E—General Provisions

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SEC. 5062. REFUND AND DRAWBACK IN CASE OF EXPORTATION.

(a) REFUND.—* * *

(b) DRAWBACK.—On the exportation of distilled spirits or wines manufactured, produced, bottled, or packaged in casks or other bulk containers in the United States on which an internal revenue tax has been paid or determined, and which are contained in any cask or other bulk container, or in bottles packed in cases or other containers, there shall be allowed, under regulations prescribe by the Secretary, a drawback equal in amount to the tax found to have been paid or determined on such distilled spirits or wines. In the case of distilled spirits, the preceding sentence shall not apply unless the claim for drawback is filed by the bottler or packager of the spirits and unless such spirits have been [stamped or restamped, and] marked, especially for export, under regulations prescribed by the Secretary. The Secretary is authorized to prescribe regulations governing the determination and payment or crediting of drawback of internal revenue tax on spirits and wines eligible for drawback under this subsection, including the requirements of such notices, bonds, bills of lading, and other evidence indicating payment or determination of tax and exportation as shall be deemed necessary.

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SEC. 5066. DISTILLED SPIRITS FOR USE OF FOREIGN EMBASSIES, LEGATIONS, ETC.

(a) ENTRY INTO CUSTOMS BONDED WAREHOUSES.—

(1) BOTTLED DISTILLED SPIRITS WITHDRAWN FROM BONDED PREMISES.—Under such regulations as the Secretary may prescribe, bottled distilled spirits may be withdrawn from bonded premises as provided in section 5214(a)(4) for transfer to customs bonded warehouses in which imported distilled spirits are permitted to be stored in bond for entry therein pending withdrawal therefrom as provided in subsection (b).

(2) BOTTLED DISTILLED SPIRITS ELIGIBLE FOR EXPORT WITH BENEFIT OF DRAWBACK.—Under such regulations as the Secretary may prescribe, distilled spirits [stamped or restamped, and marked,] marked especially for export under the provisions of section 5062(b) may be shipped to a customs bonded warehouse in which imported distilled spirits are premitted to be stored, and entered in such warehouses pending withdrawal therefrom as provided in subsection (b), and the provisions of this chapter shall apply in respect of such distilled spirits as if such spirits were for exportation.

(3) TIME DEEMED EXPORTED.—For the purposes of this chapter, distilled spirits entered into a customs bonded warehouse as provided in this subsection shall be deemed exported at the time so entered.

PART II—OCCUPATIONAL TAX

* * * * * * *

[Subpart C—Manufacturers of Stills

[Sec. 5101. Imposition and rate of tax.
[Sec. 5102. Definition of manufacturer of stills.
[Sec. 5103. Exemptions.
[Sec. 5105. Notice of manufacture of and permit to set up still.
[Sec. 5106. Export.

[SEC. 5101. IMPOSITION AND RATE OF TAX.

[Every manufacturer of stills shall pay a special tax of $55 a year, and $22 for each still or condenser for distilling made by him.

[SEC. 5102. DEFINITION OF MANUFACTURER OF STILLS.

[Any person who manufactures any still or condenser to be used in distilling shall be deemed a manufacturer of stills.

[SEC. 5103. EXEMPTIONS.

[The taxes imposed by section 5101 shall not apply in respect of stills or condensers manufactured by a proprietor of a distilled spirits plant exclusively for use in his plant or plants.

SEC. 5105. NOTICE OF MANUFACTURE OF AND PERMIT TO SET UP STILL.

[(a) REQUIREMENT.—Any person who manufactures any still, boiler, or other vessel to be used for the purpose of distilling shall, before the same is removed from the place of manufacture, notify the Secretary, setting forth in writing by whom it is to be used, its capacity, and the time when the same is to be removed from the place of manufacture, and no such still, boiler, or other vessel shall be set up without the permit in writing of the Secretary for that purpose. The notice required by this section shall be submitted in such form and manner as the Secretary may by regulations prescribe.

[(b) PENALTY.—

[(1) For penalty and forfeiture for failure to give notice of manufacture, or for setting up still without permit, see sections 5615(2) and 5687.

[(2) For penalty and forfeiture for failure to register still or distilling apparatus when set up, see sections 5601(a)(1) and 5615(1).

[SEC. 5106. EXPORT.

[(a) WITHOUT PAYMENT OF TAX.—Under regulations prescribed by the Secretary, stills or condensers for distilling may be removed from the place of manufacture for export without payment of the tax imposed thereon by section 5101.

[(b) DRAWBACK.—Stills and condensers on which the tax has been paid, and which have not been used, may be exported with the privilege of drawback, under such regulations as the Secretary may prescribe.]

Subpart C—Manufacturers of Stills

Sec. 5101. Notice of manufacture of still; set up of still.
Sec. 5102. Definition of manufactuers of stills.

SEC. 5101. NOTICE OF MANUFACTURE OF STILL; SET UP OF STILL.

(a) NOTICE REQUIREMENTS.—

(1) NOTICE OF MANUFACTURE OF STILL.—The Secretary may, pursuant to regulations, require any person who manufactures any still boiler, or other vessel to be used for the purpose of distilling, to give written notice, before the still, boiler, or other vessel is removed from the place of manufacture, setting forth by whom it is to be used, its capacity, and the time of removal from the place of manufacture.

(2) NOTICE OF SET UP OF STILL.—The Secretary may, pursuant to regulations, require that no still, boiler, or other vessel be set up without the manufacturer of the still, boiler, or other vessel first giving written notice to the Secretary of that purpose.

(b) PENALTIES, ETC.—

(1) For penalty and forfeiture for failure to give notice of manufacture, or for setting up a still without first giving notice, when required by the Secretary, see sections 5615(2) and 5687.

(2) For penalty and forfeiture for failure to register still or distilling apparatus when set up, see section 5601(a)(1) and 5615(1).

SEC. 5102. DEFINITION OF MANUFACTURER OF STILLS.

Any person who manufacturers any still or condenser to be used in distilling shall be deemed a manufacturer of stills.

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Subpart D—Wholesale Dealers

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SEC. 5116. PACKAGING DISTILLED SPIRITS FOR INDUSTRIAL USES.

(a) GENERAL.—The Secretary may, at his discretion and under such regulations as he may prescribe, authorize a dealer engaging in the business of supplying distilled spirits for industrial uses to package distilled spirits, on which the tax has been paid or determined, for such uses in containers of a capacity in excess of 1 wine gallon and not more than 5 wine gallons.

[(b) CROSS REFERENCES.—

[(1) For provisions relating to stamps for immediate containers, see section 5205(a)(1).

[(2) For provisions relating to containers of distilled spirits, see section 5206.]

(b) CROSS REFERENCE.—

"For provisions relating to containers of distilled spirits, see section 5206.

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Subpart F—Nonbeverage Domestic Drawback Claimants

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SEC. 5134. DRAWBACK.

(a) RATE OF DRAWBACK.—In the case of distilled spirits on which the tax has been paid or determined, and which have been used as provided in this subpart, a drawback shall be allowed on each proof gallon at a rate of $1 less than the rate at which the distilled spirits tax has been paid or determined.

(b) CLAIMS.—Such drawback shall be due and payable quarterly upon filing of a proper claim with the Secretary or his delegate; except that, where any person entitled to such drawback shall elect in writing to file monthly claims therefor, such drawback shall be due and payable monthly upon filing of a proper claim with the Secretary. The Secretary may require persons electing to file monthly drawback claims to file with him a bond or other security in such amount and with such conditions as he shall by regulations prescribe. Any such election may be revoked on filing of notice thereof with the Secretary. No claim under this subpart shall be allowed unless filed with the Secretary within the 6 months next succeeding the quarter in which the distilled spirits covered by the claim were used as provided in this subpart.

(c) ALLOWANCE OF DRAWBACK EVEN WHERE CERTAIN REQUIREMENTS NOT MET.—

(1) IN GENERAL.—No claim for drawback under this section shall be denied in the case of a failure to comply with any requirement imposed under this subpart or any rule or regulation issued thereunder upon the claimant's establishing to the satisfaction of the Secretary that distilled spirits on which the tax has been paid or determined were in fact used in the manufacture or production of medicines, medicinal preparations, food

products, flavors, or flavoring extracts, which were unfit for beverage purposes.

(2) PENALTY.—

(A) IN GENERAL.—In the case of a failure to comply with any requirement imposed under this subpart or any rule or regulation issued thereunder, the claimant shall be liable for a penalty of $1,000 for each failure to comply unless it is shown that the failure to comply was due to reasonable cause.

(B) PENALTY MAY NOT EXCEED AMOUNT OF CLAIM.—The aggregate amount of the penalties imposed under subparagraph (A) for failures described in paragraph (1) in respect of any claim shall not exceed the amount of such claim (determined without regard to subparagraph (A)).

(3) PENALTY TREATED AS TAX.—The penalty imposed by paragraph (2) shall be assessed, collected, and paid in the same manner as taxes, as provided in section 6662(a).

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Subchapter B—Qualification Requirements for Distilled Spirits Plants

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SEC. 5179. REGISTRATION OF STILLS.

(a) REQUIREMENTS.—Every person having in his possession or custody, or under his control, any still or distilling apparatus set up, shall register such still or apparatus with the Secretary immediately on its being set up, by subscribing and filing with the Secretary a statement, in writing, setting forth the particular place where such still or distilling apparatus is set up, the kind of still and its capacity, the owner thereof, his place of residence, and the purpose for which said still or distilling apparatus has been or is intended to be used (except that stills or distilling apparatus not used on intended to be used for the distillation, redistillation, or recovery of distilled spirits are not required to be registered under this section).

(b) CROSS REFERENCES.—

(1) For penalty and forfeiture provisions relating to unregistered stills, see section 5601(a)(1) and 5615(1).

[(2) For provisions requiring permit to set up still, boiler or other vessel for distilling, see section 5105.]

(2) For provisions requiring notification to set up a still, boiler, or other vessel for distilling, see section 5101(a)(2).

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Subchapter C—Operation of Distilled Spirits Plants

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PART I—GENERAL PROVISIONS

Sec. 5201 Regulation of operations.
Sec. 5202 Supervision of operations.

Sec. 5203 Entry and examination of premises.
Sec. 5204 Gauging.
[Sec. 5205 Stamps.]

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SEC. 5204. GAUGING.

(a) GENERAL.—* * *

* * * * * * *

(c) GAUGING, [STAMPING,] MARKING AND BRANDING BY PROPRIETORS. —The Secretary may by regulations require the proprietor of a distilled spirits plant, at the proprietor's expense and under such supervision as the Secretary may require, to do such gauging, [stamping,] marking, and branding and such mechanical labor pertaining thereto as the Secretary deems proper and determines may be done without danger to the revenue.

[SEC. 5205. STAMPS.

[(a) STAMPS FOR CONTAINERS OF DISTILLED SPRITS.—

[(1) CONTAINERS OF DISTILLED SPIRITS.—No person shall transport, possess, buy, sell, or transfer any distilled spirits, unless the immediate container thereof is stamped by a stamp evidencing the determination of the tax or indicating compliance with the provisions of this chapter. The provisions of this paragraph shall not apply to—

[(A) distilled spirits, lawfully withdrawn from bond, placed in containers for immediate consumption on the premises or for preparation for such consumption;

[(B) distilled spirits in bond or in customs custody;

[(C) distilled spirits, lawfully withdrawn from bond, in immediate containers stamped under other provisions of internal revenue or customs law or regulations issued pursuant thereto;

[(D) distilled spirits on which no internal revenue tax is required to be paid;

[(E) distilled spirits lawfully withdrawn from bond and not intended for sale or for use in the manufacture or production of any article intended for sale; or

[(F) any regularly established common carrier receiving, transporting, delivering, or holding for transportation or delivery distilled spirits in the ordinary course of its business as a common carrier.

[(2) STAMP REGULATIONS.—The Secretary shall prescribe regulations with respect to the supplying or procuring of stamps required under this subsection or section 5235, the time and manner of applying for, issuing, affixing, and destroying such stamps, the form of such stamps and the information to be shown thereon, applications for the stamps, proof that applicants are entitled to such stamps, and the method of accounting for such stamps, and such other regulations as he may deem necessary for the enforcement of this subsection. In the case of a container of a capacity of 5 wine gallons or less, the stamp shall be affixed in such a manner as to be broken when the container is opened, unless the container is one that cannot again be used after opening.

[(b) STAMPS FOF CONTAINERS OF DISTILLED SPIRITS WITHDRAWN FROM BONDED PREMISES ON DETERMINATION OF TAX.—Containers of all distilled spirits withdrawn from bonded premises on determination of tax under section 5006(a) shall be stamped by a stamp under such regulations as the Secretary shall prescribe. This subsection shall not be construed to require stamps on cases of bottled distilled spirits filled and stamped on bonded premises.

[(c) STAMPS FOR CONTAINERS OF DISTILLED SPIRITS WITHDRAWN FOR EXPORTATION.—

[(1) EXPORTATION WITHOUT PAYMENT OF TAX.—Every container of distilled spirits withdrawn for exportation under section 5214(a)(4) shall be stamped by a stamp under such regulations as the Secretary shall prescribe. This paragraph shall not be construed to require stamps on cases of bottled distilled spirits filled and stamped on bonded premises.

[(2) EXPORTATION WITH BENEFIT OF DRAWBACK.—The Secretary may require any container of distilled spirits bottled or packaged especially for export with benefit of drawback to be stamped by a stamp under such regulations as he may prescribe.

[(d) ISSUE FOR RESTAMPING.—The Secretary, under regulations prescribed by him, may authorize restamping of containers of distilled spirits which have been duly stamped but from which the stamps have been lost or destroyed by unavoidable accident.

[(e) ACCOUNTABILITY.—All stamps relating to distilled spirits shall be used and accounted for under such regulations as the Secretary may prescribe.

[(f) EFFACEMENT OF STAMPS, MARKS, AND BRANDS ON EMPTIED CONTAINERS.—Every person who empties, or causes to be emptied, any immediate container of distilled spirits bearing any stamp, mark, or brand required by law or regulations prescribed pursuant thereto (other than containers stamped under subsection (a) or section 5235) shall at the time of emptying such container efface and obliterate such stamp, mark, or brand, except that the Secretary may, by regulations, waive any requirement of this subsection as to the effacement or obliteration of marks or brands (or portions thereof) where he determines that no jeopardy to the revenue will be involved.

[(g) FORM OF STAMP.—Any stamp required by or prescribed pursuant to the provisions of this section or section 5235 may consist of such coupon, serially-numbered ticket, imprint, design, other form of stamp, or other device as the Secretary shall by regulations prescribe.

[(h) CROSS REFERENCES.—

[(1) For general provisions relating to stamps, see chapter 69.

[(2) For provisions relating to the stamping, marking, and branding of containers of distilled spirits by proprietors, see section 5204(c).

[(3) For provisions relating to the stamping of bottled alcohol, see section 5235.

[(4) For penalties and forfeitures relating to stamps, marks, and brands, see section 5604, 5613, 7208, and 7209.]

SEC. 5206. CONTAINERS.

(a) AUTHORITY TO PRESCRIBE.—The Secretary shall by regulations prescribe the types or kinds of containers which may be used to contain, store, transfer, convey, remove, or withdrawn distilled spirits.

(b) STANDARDS OF FILL.—The Secretary may by regulations prescribe the standards of fill for approved containers.

(c) MARKING, BRANDING, OR IDENTIFICATION.—Containers of distilled spirits (and cases containing bottles or other containers of such spirits) shall be marked, branded, or identified in such manner as the Secretary shall by regulations prescribe.

(d) EFFACEMENT OF MARKS AND BRANDS ON EMPTIED CONTAINERS.—Every person who empties, or causes to be emptied, any container of distilled spirits bearing any mark or brand required by law (or regulations pursuant thereto) shall at the time of emptying such container efface and obliterate such mark or brand; except that the Secretary may, by regulations, waive any requirement of this subsection where he determines that no jeopardy to the revenue will be involved.

[(d)] *(e)* APPLICABILITY.—This section shall be applicable exclusively with respect to containers of distilled spirits for industrial use, with respect to containers of distilled spirits of a capacity of more than one gallon for other than industrial use, and with respect to cases containing bottles or other containers of distilled spirits.

[(e)] *(f)* CROSS REFERENCES.—

(1) For other provisions relating to regulation of containers of distilled spirits, see section 5301.

(2) For provisions relating to labeling containers of distilled spirits of one gallon or less for nonindustrial uses, see section 5(e) of the Federal Alcohol Administration Act (27 U.S.C. 205(e)).

(3) For provisions relating to the marking and branding of containers of distilled spirits by proprietors, see section 5204(c).

(4) For penalties and forfeitures relating to marks and brands, see sections 5604 and 5613.

SEC. 5207. RECORDS AND REPORTS.

(a) RECORDS OF DISTILLED SPIRITS PLANT PROPRIETORS.—* * *

* * * * * * *

(4) The following processing activities—

(A) all distilled spirits, wines, and alcoholic ingredients received or transferred,

(B) the kind and quantity of distilled spirits packaged or bottled, *and*

(C) the kind and quantity of distilled spirits removed from his premise [, and].

[(D) the receipt, use, and balance on hand of all stamps required by law or regulations to be used by him.]

* * * * * * *

PART II—OPERATIONS ON BONDED PREMISES

* * * * * * *

SEC. 5215. RETURN OF TAX DETERMINED DISTILLED SPIRITS TO BONDED PREMISES.

(a) GENERAL RULE.—* * *

* * * * * * *

(c) RETURN OF BOTTLED DISTILLED SPIRITS FOR RELABELING AND [RESTAMPING] *RECLOSING.*—Under such regulations as the Secretary shall prescribe, bottled distilled spirits withdrawn from bonded premises may be returned to bonded premises for relabeling or [restamping] *reclosing,* and the tax under section 5001 shall not again be collected on such spirits.

* * * * * * *

SUBPART C—STORAGE

* * * * * * *

SEC. 5235. BOTTLING OF ALCOHOL FOR INDUSTRIAL PURPOSES.

Alcohol for industrial purposes may be bottled, [stamped,] labeled, and cased on bonded premises of a distilled spirits plant prior to payment or determination of tax, under such regulations as the Secretary may prescribe. [The provisions of section 5205(a)(1) shall not apply to alcohol bottled, stamped, and labeled as such under this section.]

* * * * * * *

Subchapter E—General Provisions Relating to Distilled Spirits

PART II—REGULATION OF TRAFFIC IN CONTAINERS OF DISTILLED SPIRITS

Sec. 5301. General.

SEC. 5301. GENERAL.

(a) REQUIREMENTS.—* * *

* * * * * * *

(c) REFILLING OF LIQUOR BOTTLES.—No person who sells, or offers for sale, distilled spirits, or agent or employee of such person, shall—

(1) place in any liquor bottle any distilled spirits whatsoever other than those contained in such bottle at the time of [stamping] *tax determination* under the provisions of this chapter; or

(2) posses any liquor bottle in which any distilled spirits have been placed in violation of the provisions of paragraph (1); or

(3) by the addition of any substance whatsoever to any liquor bottle, in any manner alter or increase any portion of the original contents contained in such bottle at the time of [stamping] *tax determination* under the provisions of this chapter; or

(4) possess any liquor bottle, any portion of the contents of which has been altered or increased in violation of the provisions of paragraph (3);

except that the Secretary may by regulations authorize the reuse of liquor bottles, under such conditions as he may be regulations prescribe[, if the liquor bottles are to be again stamped under the provisions of this chapter]. When used in this subsection the term "liquor bottle" shall mean a liquor bottle or other container which has been used for the bottling or packaging of distilled spirits under regulations issued pursuant to subsection (a).

(d) Closures.—The immediate container of distilled spirits withdrawn from bonded premises, or from customs custody, on determination of tax shall bear a closure or other device which is designed so as to require breaking in order to gain access to the contents of such container. The preceding sentence shall not apply to containers of bulk distilled spirits.

[(d)] *(e)* Penalty.—

For penalty for violation of this section, see section 5606.

* * * * * * *

Subchapter I—Miscellaneous General Provisions

* * * * * * *

SEC. 5555. RECORDS, STATEMENTS, AND RETURNS.

(a) General.—Every person liable to any tax imposed by this chapter, or for the collection thereof, [or for the affixing of any stamp required to be affixed by this chapter,] shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may prescribe.

* * * * * * *

Subchapter J—Penalties, Seizures, and Forfeitures Relating to Liquors

* * * * * * *

PART I—PENALTY, SEIZURE, AND FORFEITURE PROVISIONS APPLICABLE TO DISTILLING, RECTIFYING, AND DISTILLED AND RECTIFIED PRODUCTS

* * * * * * *

[Sec. 5604. Penalties relating to stamps, marks, brands, and containers.]
Sec. 5604. Penalties relating to marks, brands, and containers.

* * * * * * *

Sec. 5613. Forfeiture of distilled spirits not [stamped,] *closed*, marked, or branded as required by law.

* * * * * * *

[SEC. 5604. PENALTIES RELATING TO STAMPS, MARKS, BRANDS, AND CONTAINERS.

[(a) GENERAL.—Any person who shall—

[(1) transport, posses, buy, sell, or transfer any distilled spirits, required to be stamped under the provisions of section 5205(a)(1), unless the immediate container thereof has affixed thereto a stamp as required by such section; or

[(2) with intent to defraud the United States, empty a container stamped under the provisions of section 5205(a)(2) or section 5235 without destroying the stamp thereon as required by section 5205(a)(2) or regulations prescribed thereto; or

[(3) empty, or cause to be emptied, any distilled spirits from any immediate container (other than a container stamped under section 5205(a) or section 5235) bearing any stamp, mark, or brand required by law without effacing and obliterating such stamp, mark, or brand as required by section 5205(f); or

[(4) with intent to defraud the United States, falsely make, forge, alter, or counterfeit any stamp required under section 5205 or section 5235; or

[(5) use, sell, or have in his possession any forged or fraudulently altered stamp, or counterfeit of any stamp, required under section 5205 or section 5235, or any plate or die used or which may be used in the manufacture therof; or

[(6) with intent to defraud, the United States, use, reuse, sell, or have in his possession any stamp required to be destroyed by section 5205(a)(2) or regualtions prescribed pursuant thereto; or

[(7) remove any stamp required by law or regulations from any cask or package containing, or which had contained, distilled spirits, without defacing or destroying such stamp at the time of such removal; or

[(8) have in his possession any undestroyed or undefaced stamp removed from any cask or package containing, or which had contained, distilled spirits, or

[(9) have in his possession any cancelled stamp or any stamp which has been used, or which purports to have been used, upon any cask or package of distilled spirits; or

[(10) make, use, sell, or have in his possession any paper in imitation of the paper used in the manufacture of any stamp required under section 5205 or section 5235; or

[(11) reuse any stamp required under section 5205(a) or section 5235, after the same shall have once been affixed to a container as provided in such sections or regulations issued pursuant thereto; or

[(12) place any distilled spirits in any bottle, or reuse any bottle for the purpose of containing distilled spirits, which has once been filled and stamped under the provisions of this chapter, without removing and destroying the stamp so previously affixed to such bottle; or

[(13) affix any stamp issued pursuant to section 5205(a) to any container containing distilled spirits on which any tax due is unpaid or undetermined; or

[(14) make any false statement in any application for stamps under section 5205; or

[(15) posses any stamp prescribed under section 5205 or section 5235 obtained by him otherwise than as provided by such sections or regulations issued pursuant thereto; or

[(16) willfully and unlawfully remove, change, or deface any stamp, mark, brand, label, or seal affixed to any case of distilled spirits, or to any bottle contained therein; or

[(17) with intent to defraud the United States, purchase, sell, receive with intent to transport, or transport any empty cask or package having thereon any stamp, mark, or brand required by law to be affixed to any cask or package containing distilled spirits; or

[(18) change or alter any stamp, mark, or brand on any cask or package containing distilled spirits, or put into any cask or package spirits of greater strength than is indicated by the inspection-mark thereon, or fraudulently use any cask or package having any inspection-mark or stamp thereon, for the purpose of selling other spirits, or spirits of quantity or quality different from the spirits previously inspected therein; or

[(19) affix, or cause to be affixed, to or on any cask or package containing, or intended to contain, distilled spirits, any imitation stamp or other engraved, printed, stamped, or photographed label, device, or token, whether the same be designed as a trade mark, caution notice, caution, or otherwise, and which shall be in the similitude or likeness of, or shall have the resemblance or general appearance of, any internal revenue stamp required by law to be affixed to or upon any cask or package containing distilled spirits;

shall be fined not more than $10,000, or imprisoned not more than 5 years, or both, for each such offense.

[(b) Officers Authorized To Enforce This Section.—Any office authorized to enforce any provision of law relating to internal revenue stamps is authorized to enforce this section.]

SEC. 5604. PENALTIES RELATING TO MARKS, BRANDS, AND CONTAINERS.

(a) In General.—Any person who shall—

(1) transport, possess, buy, sell, or transfer any distilled spirits unless the immediate container bears the type of closure or other device required by section 5301(d),

(2) with intent of defraud the United States, empty a container bearing the closure or other device required by section 5301(d) without breaking such closure or other device,

(3) empty, or cause to be emptied, any distilled spirits from an immediate container bearing any mark or brand required by law without effacing and obliterating such mark or brand as required by section 5206(d),

(4) place any distilled spirits in any bottle, or reuse any bottle for the purpose of containing distilled spirits, which has once

been filled and fitted with a closure or other device under the provisions of this chapter, without removing and destroying such closure or other device,

(5) willfully and unlawfully remove, change, or deface any mark, brand, label, or seal affixed to any case of distilled spirits, or to any bottle contained therein,

(6) with intent to defraud the United States, purchase, sell, receive with intent to transport, or transport any empty cask or package having thereon any mark or brand required by law to be affixed to any cask or package containing distilled spirits, or

(7) change or alter any mark or brand on any cask or package containing distilled spirits, or put into any cask or package spirits of greater strength then is indicated by the inspection mark thereon, or fraudulently use any cask or package having any inspection mark thereon, for the purpose of selling other spirits, or spirits of quantity or quality different from the spirits previously inspected,

shall be fined not more than $10,000 or imprisoned not more than 5 years, or both, for each such offense.

(b) CROSS REFERENCES.—

For provisions relating to the authority of internal revenue offices to enforce provisions of this section, see sections 5203, 557, and 7608.

* * * * * * *

SEC. 5613. FORFEITURE OF DISTILLED SPIRITS NOT [STAMPED] CLOSED, MARKED, OR BRANDED AS REQUIRED BY LAW.

(a) UNMARKED OR UNBRANDED CASKS OR PACKAGES.—All distilled spirits found in any cask or package required by this chapter or any regulation issued pursuant thereto bear a mark, brand, or chapter and regulations issued pursuant thereto to bear a mark, brand, or identification, which cask of package is not marked, branded, or identified in compliance with this chapter and regulations issued pursuant thereto, shall be forfeited to the United States.

[(b) UNSTAMPED CONTAINERS.—All distilled spirits found in any container required by this chapter or any regulations issued pursuant thereto to bear a stamp, which container is not stamped in compliance with this chapter and regulations issued purusuant thereto, shall be forfeited to the United States.]

(b) CONTAINERS WITHOUT CLOSURES.—All distilled spirits found in any container which is required by this chapter to bear a closure or other device and which does not bear a closure or other device in compliance with this chapter shall be forfeited to the United States.

* * * * * * *

SEC. 5615. PROPERTY SUBJECT TO FORFEITURE.

The following property shall be forfeited to the United States:

(1) UNREGISTERED STILL OR DISTILLING APPARATUS.—Every still or distilling apparatus not registered as required by section 5179, together with all personal property in the possession or custody or under the control of the person required by section 5179 to register the still or distilling apparatus, and found in the building or in any yard or inclosure connected with the

building in which such still or distilling apparatus is set up; and

[(2) DISTILLING APPARATUS REMOVED WITHOUT NOTICE OR SET UP WITHOUT PERMIT.—Any still, boiler, or other vessel to be used for the purpose of distilling which is removed without notice having been given as required by section 5105(a) or which is set up without permit first having been obtained as required by such section; and]

(2) DISTILLING APPARATUS REMOVED WITHOUT NOTICE OR SET UP WITHOUT NOTICE.—Any still, boiler, or other vessel to be used for the purpose of distilling—

(A) which is removed without notice having been given when required by section 5101(a)(1), or

(B) which is set up without notice having been given when required by section 5101(a)(2); and

* * * * * * *

PART V—PENALTIES APPLICABLE TO OCCUPATIONAL TAXES

Sec. 5691. Penalties for nonpayment of special taxes relating to liquors.

SEC. 5691. PENALTIES FOR NONPAYMENT OF SPECIAL TAXES RELATING TO LIQUORS.

(a) GENERAL.—Any person who shall carry on the business of a brewer, wholesale dealer in liquors, retail dealer in liquors, wholesale dealer in beer, retail dealer in beer, [limited retail dealer, or manufacturer of stills] *or limited retail dealer,* and willfully fail to pay the special tax as required by law, shall be fined not more than $5,000, or imprisoned not more than 2 years, or both, for each such offense.

Subtitle F—Procedure and Administration

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CHAPTER 61—INFORMATION AND RETURNS

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Subchapter A—Returns and Records

* * * * * * *

PART II—TAX RETURNS OR STATEMENTS

* * * * * * *

Subpart B—Income Tax Returns

Sec. 6012. Persons required to make returns of income.
Sec. 6013. Joint returns of income tax by husband and wife.
Sec. 6014. Income tax return—tax not computed by taxpayer.
[Sec. 6015. Declaration of estimated income tax by individuals.]
Sec. 6017. Self-employment tax returns.
Sec. 6017A. Place of residence.

SEC. 6012. PERSONS REQUIRED TO MAKE RETURNS OF INCOME.

(a) General Rule.—* * *

(b) Returns Made by Fiduciaries and Receivers—

(1) Returns of decedents.—If an individual is deceased, the return of such individual required under subsection (a) shall be made by his executor, administrator, or other person charged with the property of such decedent.

(2) Persons under a disability.—If an individual is unable to make a return required under subsection (a) [or section 6015 (a)], the return of such individual shall be made by a duly authorized agent, his committee, guardian, fiduciary or other person charged with the care of the person or property of such individual. The preceding sentence shall not apply in the case of a receiver appointed by authority of law in possession of only a part of the property of an individual.

SEC. 6013. JOINT RETURNS OF INCOME TAX BY HUSBAND AND WIFE.

(a) Joint Returns.—* * *

* * * * * * *

(c) Treatment of Joint Return After Death of Either Spouse.—For purposes of sections [21], *15*, 443, and 7851(a)(1)(A), where the husband and wife have different taxable years because of the death of either spouse, the joint return shall be treated as if the taxable years of both spouses ended on the date of the closing of the surviving spouse's taxable year.

* * * * * * *

[(e) Spouse Relieved of Liability in Certain Cases.—

[(1) In general.—Under regulations prescribed by the Secretary, if—

[(A) a joint return has been made under this section for a taxable year and on such return there was omitted from gross income an amount properly includable therein which is attributable to one spouse and which is in excess of 25 percent of the amount of gross income stated in the return,

[(B) the other spouse establishes that in signing the return he or she did not know of, and had no reason to know of, such omission, and

[(C) taking into account whether or not the other spouse significantly benefited directly or indirectly from the items omitted from gross income and taking into account all other facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in tax for such taxable year attributable to such omission,

then the other spouse shall be relieved of liability for tax (including interest, penalties, and other amounts) for such taxable year to the extent that such liability is attributable to such omission from gross income.

[(2) Special rules.—For purposes of paragraph (1)—

[(A) the determination of the spouse to whom items of gross income (other than gross income from property) are attributable shall be made without regard to community property laws, and

[(B) the amount omitted from gross income shall be determined in the manner provided by section 6501(e)(1)(A).]

(e) Spouse Relieved of Liability in Certain Cases.—

(1) In general.—Under regulations prescribed by the Secretary, if—

(A) a joint return has been made under this section for a taxable year,

(B) on such return there is a substantial understatement of tax attributable to grossly erroneous items of one spouse,

(C) the other spouse establishes that in signing the return he or she did not know, and had no reason to know, that there was such substantial understatement, and

(D) taking into account all the facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in tax for such taxable year attributable to such substantial understatement,

then the other spouse shall be relieved of liability of tax (including interest, penalties, and other amounts) for such taxable year to the extent such liability is attributable to such substantial understatement.

(2) Grossly erroneous items.—For purposes of this subsection, the term "grossly erroneous items" means, with respect to any spouse—

(A) any item of gross income attributable to such spouse which is omitted from gross income, and

(B) any claim of a deduction or credit by such spouse in an amount for which there is no basis in fact or law.

(3) Substantial understatement.—For purposes of this subsection, the term "substantial understatement" means any understatement (as defined in section 6661(b)(2)(A)) which exceeds $500.

(4) Special rule.—For purposes of paragraph (2)(A), the determination of the spouse to whom items of gross income (other than gross imcome from property) are attributable shall be made without regard to community property laws.

* * * * * * *

[SEC. 6015. DECLARATION OF ESTIMATED INCOME TAX BY INDIVIDUALS.

[(a) Requirement of Declaration.—Except as otherwise provided in this section, every individual shall make a declaration of his estimated tax for the taxable year if—

[(1) the gross income for the taxable year can reasonably be expected to exceed—

[(A) $20,000, in the case of—

[(i) a single individual, including a head of a household (as defined in section 2(b)) or a surviving spouse (as defined in section 2(a)); or

[(ii) a married individual entitled under subsection (c) to file a joint declaration with his spouse, but only if his spouse has not received wages (as defined in section 3401(a)) for the taxable year; or

[(B) $10,000, in the case of a married individual entitled under subsection (c) to file a joint declaration with his spouse, but only if both he and his spouse have received wages (as defined in section 3401(a)) for the taxable year; or

[(C) $5,000, in the case of a married individual not entitled under subsection (c) to file a joint declaration with his spouse; or

[(2) the gross income can reasonably be expected to include more than $500 from sources other than wages (as defined in section 3401(a)).

[(b) DECLARATION NOT REQUIRED IN CERTAIN CASES.—No declaration shall be required under subsection (a) if the estimated tax (as defined in subsection (d)) is less than the amount determined in accordance with the following table:

[In the case of taxable years beginning in:	The amount is:
1981	$100
1982	200
1983	300
1984	400
1985 and thereafter	500

[(c) JOINT DECLARATION BY HUSBAND AND WIFE.—In the case of a husband and wife, a single declaration under this section may be made by them jointly, in which case the liability with respect to the estimated tax shall be joint and several. No joint declaration may be made if either the husband or the wife is a nonresident alien, if they are separated under a decree of divorce or of separate maintenance, or if they have different taxable years. If a joint declaration is made but a joint return is not made for the taxable year, the estimated tax for such year may be treated as the estimated tax of either the husband or the wife, or may be divided between them.

[(d) ESTIMATED TAX.—For purposes of this title, in the case of an individual, the term "estimated tax" means—

[(1) the amount which the individual estimates as the amount of the income tax imposed by chapter 1 for the taxable year (other than the tax imposed by section 55), plus

[(2) the amount which the individual estimates as the amount of the self-employment tax imposed by chapter 2 for the taxable year, minus

[(3) the amount which the individual estimates as the sum of—

[(A) any credits against tax provided by part IV of subchapter A of chapter 1, and

[(B) to the extent allowed under regulations prescribed by the Secretary, any overpayment of the tax imposed by section 4986.

[(e) CONTENTS OF DECLARATION.—The declaration shall contain such pertinent information as the Secretary may by forms or regulations prescribe.

[(f) AMENDMENT OF DECLARATION.—An individual may make amendments of a declaration filed during the taxable year under regulations prescribed by the Secretary.

[(g) RETURN AS DECLARATION OR AMENDMENT.—If on or before January 31 (or March 1, in the case of an individual referred to in section 6073(b), relating to income from farming or fishing) of the succeeding taxable year the taxpayer files a return, for the taxable year for which the declaration is required, and pays in full the amount computed on the return as payable, then, under regulations prescribed by the Secretary—

[(1) if the declaration is not required to be filed during the taxable year, but is required to be filed on or before January 15, such return shall be considered as such declaration; and

[(2) if the tax shown on the return (reduced by the sum of the credits against tax provided by part IV of subchapter A of chapter 1) is greater than the estimated tax shown in a declaration previously made, or in the last amendment thereof, such return shall be considered as the amendment of the declaration permitted by subsection (e) to be filed on or before January 15.

In the application of this subsection in the case of a taxable year beginning on any date other than January 1, there shall be substituted, for the 15th or last day of the months specified in this subsection, the 15th or last day of the months which correspond thereto.

[(h) SHORT TAXABLE YEARS.—An individual with a taxable year of less than 12 months shall make a declaration in accordance with regulations prescribed by the Secretary.

[(i) ESTATES AND TRUSTS.—The provisions of this section shall not apply to an estate or trust.

[(j) NONRESIDENT ALIEN INDIVIDUALS.—No declaration shall be required to be made under this section by a nonresident alien individual unless—

[(1) withholding under chapter 24 is made applicable to the wages (as defined in section 3401(a)), or to the interest, dividends, and patronage dividends (as defined in section 3454), of such individual,

[(2) such individual has income (other than compensation for personal services subject to deduction and withholding under section 1441) which is effectively connected with the condct of a trade or business within the United States, or

[(3) such individual is a resident of Puerto Rico during the entire taxable year.

[(k) TERMINATION.—No declaration shall be required under this section for any taxable year beginning after December 31, 1982.]

* * * * * * *

Subpart D—Miscellaneous Provisions

* * * * * * *

SEC. 6020. RETURNS PREPARED FOR OR EXECUTED BY SECRETARY.

(a) PREPARATION OF RETURN BY SECRETARY.—If any person shall fail to make a return required by this title or by regulations prescribed thereunder, but shall consent to disclose all information necessary for the preparation thereof, then, and in that case, the Secretary may prepare such return, which, being signed by such person, may be received by the Secretary as the return of such person.

(b) EXECUTION OF RETURN BY SECRETARY.—

(1) AUTHORITY OF SECRETARY TO EXECUTE RETURN.—If any person fails to make any return [(other than a declaration of estimated tax required under section 6015)] required by any internal revenue law or regulation made thereunder at the time prescribed therefor, or makes, willfully or otherwise, a false or fraudulent return, the Secretary shall make such return from his own knowledge and from such information as he can obtain through testimony or otherwise.

(2) STATUS OF RETURNS.—Any return so made and subscribed by the Secretary shall be prima facie good and sufficient for all legal purposes.

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PART III—INFORMATION RETURNS

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Subpart A—Information Concerning Persons Subject to Special Provisions

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SEC. 6038A. INFORMATION WITH RESPECT TO CERTAIN FOREIGN-OWNED CORPORATIONS.

(a) REQUIREMENT.—* * *

* * * * * * *

(c) DEFINITIONS.—For purposes of this section—

(1) CONTROL.—The term "control" has the meaning given to such term by section [6038(d)(1)] *Section 6038(e)(1);* except that "at least 50 percent" shall be substituted for "more than 50 percent" each place it appears in such section.

* * * * * * *

PART III—INFORMATION RETURNS

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Subpart B—Information Concerning Transactions With Other Persons

Sec. 6041. Information at source.
Sec. 6041A. Returns regarding payments of remuneration for services and direct sales.
Sec. 6042. Returns regarding payments of dividends and corporate earnings and profits.
Sec. 6043. Returns regarding liquidation, dissolution, termination, or contraction.
Sec. 6044. Returns regarding payments of patronage dividends.
Sec. 6045. Returns of brokers.
Sec. 6046. Returns as to organization or reorganization of foreign corporations and as to acquisitions of their stock.
Sec. 6046A. Returns as to interests in foreign partnerships.
Sec. 6047. Information relating to certain trusts and annuity [and bond purchase] plans.
Sec. 6048. Returns as to certain foreign trusts.
Sec. 6049. Returns regarding payments of interest.
Sec. 6050A. Reporting requirements of certain fishing boat operators.
Sec. 6050B. Returns relating to unemployment compensation.
Sec. 6050C. Information regarding windfall profit tax on domestic crude oil.
Sec. 6050D. Returns relating to energy grants and financing.

Sec. 6050E. State and local income tax refunds.
Sec. 6050F. Returns relating to social security benefits.

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SEC. 6047. INFORMATION RELATING TO CERTAIN TRUSTS AND ANNUITY [AND BOND PURCHASE] PLANS.

(a) Trustees and Insurance Companies.—The trustee of a trust described in section 401(a) which is exempt from tax under section 501(a) to which contributions have been under a plan on behalf of any owner-employee (as defined in section 401(c)(3)), and each insurance company or other person which is the insurer of a contract purchased by such a trust, or purchased under a plan described in section 403(a), contributions for which have been paid on behalf of any owner-employee, shall file such returns (in such form and at such times), keep such records, make such identification of contracts and funds (and accounts within such funds), and supply such information, as the Secretary shall by forms or regulations prescribe.

* * * * * * *

[(c) Employees Under Qualified Bond Purchase Plans.—Every individual in whose name a bond described in section 405(b)(1) is purchased by his employer under a qualified bond purchase plan described in section 405(a), or by a trust described in section 401(a) which is exempt from tax under section 501(a), shall furnish—

[(1) to his employer or to such trust, and

[(2) to the Secretary (or to such person as the Secretary may by regulations prescribe), such information as the Secretary shall by forms or regulations prescribe.]

[(d)] *(c)* Other Programs.—To the extent provided by regulations prescribed by the Secretary, the provisions of this section apply with respect to any payment described in section 219 and to transactions of any trust described in section 408(a) or under an individual retirement annuity described in section 408(b).

[(e)]*(d)* Reports by Employers, Plan Administrators, Etc.—

(1) In general.—The Secretary shall by forms or regulations require that—

(A) the employer maintaining, or the plan administrator (within the meaning of section 414(g)) of, a plan from which designated distributions (as defined in section 3405(d)(1)) may be made, and

(B) any person issuing any contract under which designated distributions (as so defined) may be made, make returns and reports regarding such plan (or contract) to the Secretary, to the participants and beneficiaries of such plan (or contract), and to such other persons as the Secretary may by regulations prescribe.

(2) Form, etc., of reports.—Such reports shall be in such form, made at such time, and contain such information as the Secretary may prescribe by forms or regulations.

[(f)**]***(e)* Cross References.—

(1) For provisions relating to penalties for failure to file a return by this section, see section 6652(f).

(2) For criminal penalty for furnishing fraudlent information, see section 7207.

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SEC. 6049. RETURNS REGARDING PAYMENTS OF INTEREST.

(a) Requirement of Reporting.—

(b) Interest Defined.—

(1) Genral Rule.—For purposes of subsection (a), the term "interest" means—

(A) Interest on any obligation—

(i) issued in registered form, or

(ii) of a type offered to the public, other than any obligation with a maturity (at issue) of not more than 1 year which is held by a corporation,

(B) interest on deposits with persons carrying on the banking business,

(C) amounts (whether or not designated as interest) paid by a mutual savings bank, savings and loan association, building and loan association, cooperative bank, homestead association, credit union, industrial loan association or bank, or similar organization, in respect of deposits, investment certificates, or withdrawable or repurchasable shares,

(D) interest on amounts held by an insurance company under an agreement to pay interest thereon,

(E) interest on deposits with brokers (as defined in section 6045(c)),

(F) interest paid on amounts held by investment companies (as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3)) and on amounts invested in other pooled funds or trusts, and

(G) to the extent provided in regulations prescribed by the Secretary, any other interest (which is not described in paragraph (2)).

(2) Exceptions.—For purposes of subsection (a), the term "interest" does not include—

(A) interest on any obligation issued by a natural person,

(B) interest on any obligation if such interest is exempt from tax under section 103(a) or if such interest is exempt from tax (without regard to the identity of the holder) under any other provision of this title,

(C) except to the extent otherwise provided in regulations—

(i) any amount paid to any person referred to in paragraph (2) of section 3452(c) (other than subparagraphs (J) and (K) thereof), or

(ii) any amount described in section 3454(a)(2)(D) or (E), *and*

(D) except to the extent otherwise provided in regulations, any amount not described in subparagraph (C) of this paragraph which is income from sources outside the United States or which is paid by—

(i) a foreign government or international organization or any agency or instrumentality thereof.

(ii) a foreign central bank of issue.

(iii) a foreign corporation not engaged in a trade or business in the United States,

(iv) a foreign corporation, the interest payments of which would be exempt from withholding under subchapter A of chapter 3 if paid to a person who is not a United States person, or

(v) a partnership not engaged in a trade or business in the United States and composed in whole of nonresident alien individuals and persons described in clause (i), (ii), or (iii), **[**and**]**

[(E) any amount on which the person making payment is required to deduct and withhold tax under section 1451 (relating to tax-free covenant bonds**]**), or would be so required but for section 1451(d) (relating to benefit of personal exemptions).

(3) PAYMENTS BY UNITED STATES NOMINEES ETC., OF UNITED STATES PERSON.—If, within the United States, a United States person—

(A) collects interest (or otherwise acts as a middleman between the payor and payee) from a foreign person described in paragraph (2)(D) or collects interest from a United States person which is income from sources outside the United States for a second person who is a United States person, or

(B) makes payments of such interest to such second United States person,

notwithstanding paragraph (2)(D), such payment shall be subject to the requirements of subsection (a) with respect to such second United States person.

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Subpart E—Registration of and Information Concerning Pension, Etc., Plans

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SEC. 6058. INFORMATION REQUIRED IN CONNECTION WITH CERTAIN PLANS OF DEFERRED COMPENSATION.

(a) IN GENERAL.—* * *

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(e) SPECIAL IRP TAX DEFINED.—For purposes of this section, the term "special IRP tax" means a tax imposed by—

(1) section 408(f),

[(2) section 409 (c),**]**

[(3)**]** *(2)* section 4973, or

[(4)**]** *(3)* section 4974.

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PART V—TIME FOR FILING RETURNS AND OTHER DOCUMENTS

Sec. 6071. Time for filing returns and other documents.
Sec. 6072. Time for filing income tax returns.
Sec. 6073. Time for filing declarations of estimated income tax by individuals.
Sec. 6075. Time for filing estate and gift tax returns.

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SEC. 6073. TIME FOR FILING DECLARATIONS OF ESTIMATED INCOME TAX BY INDIVIDUALS.

[(a) INDIVIDUALS OTHER THAN FARMERS OR FISHERMEN.—Declarations of estimated tax required by section 6015 from individuals regarded as neither farmers nor fishermen for the purpose of that section shall be filed on or before April 15 of the taxable year, except that if the requirements of section 6015 are first met—

[(1) After April 1 and before June 2 of the taxable year, the declaration shall be filed on or before June 15 of the taxable year, or

[(2) After June 1 and before September 2 of the taxable year, the declaration shall be filed on or before September 15 of the taxable year, or

[(3) After September 1 of the taxable year, the declaration shall be filed on or before January 15 of the succeeding taxable year.

In the case of a nonresident alien described in section 6072(c), the requirements of section 6015 shall be deemed to be first met no earlier than after April 1 and before June 2 of the taxable year.

[(b) FARMERS OR FISHERMEN.—Declarations of estimated tax required by section 6015 from any individual—

[(1) whose estimated gross income from farming or fishing (including oyster farming) for the taxable year is at least two-thirds of the total estimated gross income from all sources for the taxable year, or

[(2) whose gross income from farming or fishing (including oyster farming) shown on the return of the individual for the preceding taxable year is at least two-thirds of the total gross income from all sources shown on such return,

may, in lieu of the time prescribed in subsection (a), be filed at any time on or before January 15 of the taxable year succeeding the taxable year.

[(c) AMENDMENT.—An amendment of a declaration may be filed in any interval between installment dates prescribed for that taxable year, but only one amendment may be filed in each such interval.

[(d) SHORT TAXABLE YEARS.—The application of this section to taxable years of less than 12 months shall be in accordance with regulations prescribed by the Secretary.

[(e) FISCAL YEARS.—In the application of this section to the case of a taxable year beginning on any date other than January 1, there shall be substituted, for the months specified in this section, the months which correspond thereto.

[(f) TERMINATION.—This section shall not apply to any taxable year beginning after December 31, 1982.]

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PART VIII—DESIGNATION OF INCOME TAX PAYMENTS TO PRESIDENTIAL ELECTION CAMPAIGN FUND

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SEC. 6096. DESIGNATION BY INDIVIDUALS.

(a) In General.—Every individual (other than a nonresident alien) whose income tax liability for the taxable year is $1 or more may designate that $1 shall be paid over to the Presidential Election Campaign Fund in accordance with the provisions of section 9006(a). In the case of a joint return of husband and wife having an income tax liability of $2 or more, each spouse may designate that $1 shall be paid to the fund.

(b) Income Tax Liability.—For purposes of subsection (a), the income tax liability of an individual for any taxable year is the amount of the tax imposed by chapter 1 on such individual for such taxable year (as shown on his return), reduced by the sum of the credits (as shown in his return) [allowable under section 33, 37, 38, 40, 41, 42, 44, 44A, 44B, 44C, 44D, 44E, 44F, 44G, and 44H.] *Allowable under part IV of subchapter A of chapter 1 (other than subpart C thereof).*

(c) Manner and Time of Designation.—A designation under subsection (a) may be made with respect to any taxable year—

(1) at the time of filing the return of the tax imposed by chapter 1 for such taxable year, or

(2) at any other time (after the time of filing the return of the tax imposed by chapter 1 for such taxable year) specified in regulations prescribed by the Secretary.

Such designation shall be made in such manner as the Secretary prescribes by regulations except that, if such designation is made at the time of filing the return of the tax imposed by chapter 1 for such taxable year, such designation shall be made either on the first page of the return or on the page bearing the taxpayer's signature.

Subchapter B—Miscellaneous Provisions

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SEC. 6103. CONFIDENTIALITY AND DISCLOSURE OF RETURNS AND RETURN INFORMATION

(a) General. Rule.— * * *

* * * * * * *

(d) Disclosure to State Tax Officials.—

(1) In General.—Returns and return information with respect to taxes imposed by chapters 1, 2, 6, 11, 12, 21, 23, 24, 31, 32, 44, *45,* 51, and 52 and subchapter D of chapter 36 shall be open to inspection by, or disclosure to, any State agency, body, or commission, or its legal representative, which is charged under the laws of such State with responsibility for the administration of State tax laws for the purpose of, and only to the extent necessary in, the administration of such laws, including any procedures with respect to locating any person who may be entitled to a refund. Such inspection shall be permitted, or such disclosure made, only upon written request by the head of

such agency, body, or commission, and only to the representatives of such agency, body, or commission designated in such written request as the individuals who are to inspect or to receive the returns or return information on behalf of such agency, body, or commission. Such representative shall not include any individual who is the chief executive officer of such State or who is neither an employee of legal representative of such agency, body, or commission nor a person described in subsection (n). However, such return information shall not be disclosed to the extent that the Secretary determines that such disclosure would identify a confidential informant or seriously impair any civil or criminal tax investigation.

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(l) DISCLOSURE OF RETURNS AND RETURN INFORMATION FOR PURPOSES OTHER THAN TAX ADMINISTRATION.—

(1) DISCLOSURE OF CERTAIN RETURNS AND RETURN INFORMATION TO SOCIAL SECURITY ADMINISTRATION AND RAILROAD RETIREMENT BOARD.—* * *

* * * * * * *

(5) DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE.—Upon written request by the Secretary of [Health, Education, and Welfare,] *Health and Human Services* the Secretary may disclose information returns filed pursuant to part III of subchapter A of chapter 61 of this subtitle for the purpose of carrying out, in accordance with an agreement entered into pursuant to section 232 of the Social Security Act, an effective return processing program.

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[(7)]*(8)* DISCLOSURE OF CERTAIN RETURN INFORMATION BY SOCIAL SECURITY ADMINISTRATION TO STATE AND LOCAL CHILD SUPPORT ENFORCEMENT AGENCIES.—

(A) IN GENERAL.—Upon written request, the Commissioner of Social Security shall disclose directly to officers and employees of a State or local child support enforcement agency return information from returns with respect to net earnings from self-employment (as defined in section 1402), wages (as defined in section 3121(a) or 3401(a)), and payments of retirement income which have been disclosed to the Social Security Administration, as provided by paragraph (1) or (5) of this subsection.

(B) RESTRICTION ON DISCLOSURE.—The Commissioner of Social Security shall disclose return information under subparagraph (A) only for purposes of, and to the extent necessary in, establishing and collecting child support obligations from, and locating, individuals owing such obligations. For purposes of the preceding sentence, the term "child support obligations" only includes obligations which are being enforced pursuant to a plan described in section 454 of the Social Security Act which has been approved by the Secretary of Health and Human Services under part D of title IV of such Act.

(C) STATE OR LOCAL CHILD SUPPORT ENFORCEMENT AGENCY.—For purposes of this paragraph, the term "State or local child support enforcement agency" means any agency of a State or political subdivision thereof operating pursuant to a plan described in subparagraph (B).

(9) DISCLOSURE OF ALCOHOL FUEL PRODUCERS TO ADMINISTRATORS OF STATE ALCOHOL LAWS.—Notwithstanding any other provision of this section, the Secretary may disclose—

(A) the name and address of any person who is qualified to produce alcohol for fuel use under section 5181, and

(B) the location of any premises to be used by such person in producing alcohol for fuel,

to any State agency, body, or commission, or its legal representative, which is charged under the laws of such State with responsibility for administration of State alcohol laws solely for use in the administration of such laws.

* * * * * * *

(p) PROCEDURE AND RECORDKEEPING.—

(1) MANNER, TIME, AND PLACE OF INSPECTION.—Requests for the inspection or disclosure of a return or return information and such inspection or disclosure shall be made in such manner and at such time and place as shall be prescribed by the Secretary.

(2) PROCEDURE.—

(A) REPRODUCTION OF RETURNS.—A reproduction or certified reproduction of a return shall, upon written request, be furnished to any person to whom disclosure or inspection of such return is authorized under this section. A reasonable fee may be prescribed for furnishing such reproduction or certified reproduction.

(B) DISCLOSURE OF RETURN INFORMATION.—Return information disclosed to any person under the provisions of this title may be provided in the form of written documents, reproductions of such documents, films or photoimpressions, or electronically produced tapes, disks, or records, or by any other mode or means which the Secretary determines necessary or appropriate. A reasonable fee may be prescribed for furnishing such return information.

(C) USE OF REPRODUCTIONS.—Any reproduction of any return, document, or other matter made in accordance with this paragraph shall have the same legal status as the original, and any such reproduction shall, if properly authenticated, be admissible in evidence in any judicial or administrative proceeding as if it were the original, whether or not the original is in existence.

(3) RECORDS OF INSPECTION AND DISCLOSURE.—

(A) SYSTEM OF RECORDKEEPING.—Except as otherwise provided by this paragraph, the Secretary shall maintain a permanent system of standardized records or accountings of all requests for inspection or disclosure of returns and return information (including the reasons for and dates of such requests) and of returns and return information inspected or disclosed under this section. Notwithstanding the provisions of section 522a(c) of title 5, United States Code, the Secretary shall not be required to maintain a record or accounting of requests for inspection or disclosure of returns and return information, or of returns and return information inspected or disclosed, under the authority of subsections (c), (e), (h)(1), (3)(A), or (4), (i)(4) or (7)(A)(ii), (k)(1), (2), or (6), (l)(1), (4)(B), [(5), or (7)] (5), (7), (8), or (9), (m), or (n). The records or accountings required to be maintained under this paragraph shall be available for examination by the Joint Committee on Taxation or the Chief of Staff of such joint committee. Such record or accounting shall also be available for examination by such person or persons as may be, but only to the extent, authorized to make such examination under section 552a(c)(3) of title 5, United States Code.

(B) REPORT BY THE SECRETARY.—The Secretary shall, within 90 days after the close of each calendar year, furnish to the Joint Committee on Taxation a report with respect to, or summary of, the records or accountings described in subparagraph (A) in such form and containing such information as such joint committee or the Chief of Staff of such joint committee may designate. Such report or summary shall not, however, include a record or accounting of any request by the President under subsection (g) for, or the disclosure in response to such request of, any return or return information with respect to any individual who, at the time of such request, was an officer or employee of the executive branch of the Federal Government. Such report or summary, or any part thereof, may be disclosed by such joint committee to such persons and for such purposes as the joint committee may, by record vote of a majority of the members of the joint committee, determine.

(C) PUBLIC REPORT ON DISCLOSURES.—The Secretary shall, within 90 days after the close of each calendar year, furnish to the Joint Committee on Taxation for disclosure to the public a report with respect to the records or accountings described in subparagraph (A) which—

(i) provides with respect to each Federal agency, each agency, body, or commission described in subsection (d), (i)(3)(B)(i) or (l)(6), and the General Accounting Office the number of—

(I) requests for disclosure of return and return information,

(II) instances in which returns, and return information were disclosed pursuant to such requests or otherwise,

(III) taxpayers whose returns or return information with respect to whom, were disclosed pursuant to such requests, and

(ii) describes the general purposes for which such requests were made.

* * * * * * *

(4) Safeguards.—Any Federal agency described in subsection (h)(2), (h)(6), (i)(1), (2), (3), or (5), (j)(1) or (2), (l)(1), (2), (3), or (5), or (o)(1), the General Accounting Office, or any agency, body, or commission described in subsection (d), (i)(3)(B)(i), or [(l)(6), or (7)] *(l)(6), (7), (8), or (9)* shall, as a condition for receiving returns or return information—

(A) establish and maintain, to the satisfaction of the Secretary, a permanent system of standardized records with respect to any request, the reason for such request, and the date of such request made by or of it and any disclosure of return or return information made by or to it;

(B) establish and maintain, to the satisfaction of the Secretary, a secure area or place in which such returns or return information shall be stored;

(C) restrict, to the satisfaction of the Secretary, access to the returns or return information only to persons whose duties or responsibilities require access and to whom disclosure may be made under the provisions of this title;

(D) provide such other safeguards which the Secretary determines (and which he prescribes in regulations) to be necessary or appropriate to protect the confidentiality of the returns or return information;

(E) furnish a report to the Secretary, at such time and containing such information as the Secretary may prescribe, which describes the procedures established and utilized by such agency, body, or commission or the General Accounting Office for ensuring the confidentiality of returns and return information required by this paragraph; and

(F) upon completion of use of such returns or return information—

(i) in the case of an agency, body, or commission described in subsection (d), (i)(3)(B)(i), or [(l)(6) or (7)] *(l)(6), (7), (8), or (9)*, return to the Secretary such returns or return information (along with any copies made therefrom) or make such returns or return information undisclosable in any manner and furnish a written report to the Secretary describing such manner; and

(ii) in the case of an agency described in subsections (h)(2), (h)(6), (i)(1), (2), (3), or (5), (j)(1) or (2), (l)(1), (2), (3), or (5), or (o)(1), or the General Accounting Office, either—

(I) return to the Secretary such returns or return information (along with any copies made therefrom),

(II) otherwise make such returns or return information undisclosable, or

(III) to the extent not so returned or made undisclosable, ensure that the conditions of subparagraphs (A), (B), (C), (D), and (E) of this paragraph continue to be met with respect to such returns or return information, except that the conditions of subparagraphs (A), (B), (C), (D), and (E) shall cease to apply with respect to any return or return information if, and to the extent that, such return or return information is disclosed in the course of any judicial or administrative proceeding and made a part of the public record thereof. If the Secretary determines that any such agency, body, or commission or the General Accounting Office has failed to, or does not, meet the requirements of this paragraph, he may, after any proceedings for review established under paragraph (7), take such actions as are necessary to ensure such requirements are met, including refusing to disclose returns or return information to such agency, body, or commission or the General Accounting Office until he determines that such requirements have been or will be met. In the case of any agency which receives any mailing address under subsection (m)(2) or (4) and which discloses any such mailing address to any agent, this paragraph shall apply to such agency and each such agent (except that, in the case of an agent, any report to the Secretary or other action with respect to the Secretary shall be made or taken through such agency).

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SEC. 6104. PUBLICITY OF INFORMATION REQUIRED FROM CERTAIN EXEMPT ORGANIZATIONS AND CERTAIN TRUSTS.

(a) INSPECTION OF APPLICATIONS FOR TAX EXEMPTION.—

(1) PUBLIC INSPECTION.—

(A) ORGANIZATIONS DESCRIBED IN SECTION 501.—If an organization described in section 501 (c) or (d) is exempt from taxation under section 501(a) for any taxable year, the application filed by the organization with respect to which the Secretary made his determination that such organization was entitled to exemption under section 501(a), together with any papers submitted in support of such application, and any letter or other document issued by the Internal Revenue Service with respect to such application shall be open to public inspection at the national office of the Internal Revenue Service. In the case of any application filed after the date of the enactment of this subparagraph, a copy of such application and such letter or document shall be open to public inspection at the appropriate field office of the Internal Revenue Service (determined under regulations prescribed by the Secretary). Any inspection under this subparagraph may be made at such times, and in such manner, as the Secretary shall by regulations prescribe. After the application of any organization has been opened to public inspection under this subparagraph, the Secretary shall, on the request of any person with respect to such organization, furnish a statement indicating the subsection and paragraph of section 501 which it has been determined describes such organization.

(B) PENSION, ETC., PLANS.—The following shall be open to public inspection at such times and in such places as the Secretary may prescribe;

(i) any application filed with respect to the qualification of a pension, profit-sharing, or stock bonus plan under section 401(a)[, 403(a), or 405(a),] *or 403(a),* an individual retirement account described in section 408(a), or an individual retirement annuity described in section 408(b),

(ii) any application filed with respect to the exemption from tax under section 501(a) of an organization forming part of a plan or account referred to in clause (i),

(iii) any papers submitted in support of an application referred to in clause (i) or (ii), and

(iv) any letter or other document issued by the Internal Revenue Service and dealing with the qualification referred to in clause (i) or the exemption from tax referred to in clause (ii).

Except in the case of a plan participant, this subparagraph shall not apply to any plan referred to in clause (i) having not more than 25 participants.

(C) CERTAIN NAMES AND COMPENSATION NOT TO BE OPEN TO PUBLIC INSPECTION.—In the case of any application, document, or other papers, referred to in subparagraph (B), information from which the compensation (including deferred compensation) of any individual may be ascertained shall not be opened to public inspection under subparagraph (B).

(D) WITHHOLDING OF CERTAIN OTHER INFORMATION.—Upon request of the organization submitting any supporting papers described in subparagraph (A) or (B), the Secretary shall withhold from public inspection any information contained therein which he determines relates to any trade secret, patent, process, style of work, or apparatus, of the organization, if he determines that public disclosure of such information would adversely affect the organization. The Secretary shall withhold from public inspection any information contained in supporting papers described in subparagraph (A) or (B) the public disclosure of which he determines would adversely affect the national defense.

(2) INSPECTION BY COMMITTEE OF CONGRESS.—Section 6103(f) shall apply with respect to—

(A) the application for exemption of any organization described in section 501 (c) or (d) which is exempt from taxation under section 501(a) for any taxable year, and any application referred to in subparagraph (B) of subsection (a)(1) of this section, and

(B) any other papers which are in the possession of the Secretary and which relate to such application,

as if such papers constituted returns.

* * * * * * *

(d) PUBLIC INSPECTION OF PRIVATE FOUNDATIONS' ANNUAL RETURNS.—The annual return required to be filed under section 6033 (relating to returns by exempt organizations) by any organization which is a private foundation within the meaning of section 509(a) shall be made available by the foundation managers for inspection at the principal office of the foundation during regular business hours by any citizen on request made within 180 days after the date of the publication of notice of its availability. Such notice shall be published, not later than the day prescribed for filing such annual return (determined with regard to any extension of time for filing), in a newspaper having general circulation in the county in which the principal office of the private foundation is located. The notice shall state that the annual return of the private foundation is available at its principal office for inspection during regular business hours by any citizen who requests it within 180 days after the date of such publication, and shall state the address *and the telephone number* of the private foundation's principal office and the name of its principal manager.

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CHAPTER 62—TIME AND PLACE FOR PAYING TAX

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Subchapter A—Place and Due Date for Payment of Tax

Sec. 6151. Time and place for paying tax shown on returns.
Sec. 6152. Installment payments.
[Sec. 6153. Installment payments of estimated income tax by individuals.]
Sec. 6154. Installment payments of estimated income tax by corporations.
Sec. 6155. Payment on notice and demand.
Sec. 6156. Installment payments of tax on use of highway motor vehicles.
Sec. 6157. Payment of Federal unemployment tax on quarterly or other time period basis.
Sec. 6158. Installment payment of tax attributable to divestitures pursuant to Bank Holding Company Act Amendments of 1970.

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SEC. 6153. INSTALLMENT PAYMENTS OF ESTIMATED INCOME TAX BY INDIVIDUALS.

(a) GENERAL RULE.—The amount of estimated tax (as defined in section 6015(d)) with respect to which a declaration is required under section 6015 shall be be paid as follows:

[(1) If the declaration is filed on or before April 15 of the taxable year, the estimated tax shall be paid in four equal installments. The first installment shall be paid at the time of the filing of the declaration, the second and third on June 15 and September 15, respectively, of the taxable year, and the fourth on January 15 of the succeeding taxable year.

[(2) If the declaration is filed after April 15 and not after June 15 of the taxable year, and is not required by section 6073(a) to be filed on or before April 15 of the taxable year, the estimated tax shall be paid in three equal installments. The first installment shall be paid at the time of the filing of the declaration, the second on September 15 of the taxable year, and the third on January 15 of the succeeding taxable year.

[(3) If the declaration is filed after June 15 and not after September 15 of the taxable year, and is not required by section 6073(a) to be filed on or before June 15 of the taxable year, the estimated tax shall be paid in two equal installments. The first installment shall be paid at the time of the filing of the declaration, and the second on January 15 of the succeeding taxable year.

[(4) If the declaration is filed after September 15 of the taxable year, and is not required by section 6073(a) to be filed on or before September 15 of the taxable year, the estimated tax shall be paid in full at the time of the filing of the decalartion.

[(5) If the declaration is filed after the time prescribed in section 6073(a) (including cases in which an extension of time for filing the declaration has been granted under section 6081), paragraphs (2), (3), and (4) of this subsection shall not apply, and there shall be paid at the time of such filing all installments of estimated tax which would have been payable on or before such time if the declaration had been filed within the time prescribed in section 6073(a), and the remaining installments shall be paid at the times at which, and in the amounts in which, they would have been payable if the declaration had been so filed

[(b) Farmers or Fishermen.—If an individual referred to in section 6073(b) (relating to income from farming or fishing) makes a declaration of estimated tax after September 15 of the taxable year and on or before January 15 of the succeeding taxable year, the estimated tax shall be paid in full at the time of the filing of the declaration.

[(c) Amendments of Declaration.—If any amendment of a declaration is filed, the remaining installments, if any, shall be ratrably increased or decreased, as the case may be, to reflect the increase or decrease, as the case may be, in the estimated tax by reason of such amendment, and if any amendment is made after September 15 of the taxable year, any increaase in the estimated tax by reason thereof shall be paid at the time of making such amendment.

[(d) Application to Short Taxable Years.—The application of this section to taxable years of less than 12 months shall be in accordance with regulations prescribed by the Secretary.

[(e) Fiscal Years.—In the application of this section to the case of a taxable year beginning on any date other than January 1, there shall be substituted, for the months specified in this section, the months which correspond thereto.

[(f) Installments Paid in Advance.—At the election of the individual, any installment of the estimated tax may be paid prior to the date prescribed for its payment.

[(g) Special Rules for Taxable Years Beginning After 1982.—In the case of taxable years beginning after 1982—

[(1) this section shall be applied as if the requirements of sections 6015 and 6073 remained in effect, and

[(2) the amount of the estimated tax taken into account under this section shall be determined under rules similar to the rules of subsections (b) and (d) of section 6654.]

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CHAPTER 63—ASSESSMENT

* * * * * * *

Subchapter A—In General

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SEC. 6201. ASSESSMENT AUTHORITY.

(a) AUTHORITY OF SECRETARY.—The Secretary is authorized and required to make the inquires, determinations, and assessments of all taxes (including interest, additional amounts, additions to the tax, and assessable penalties) imposed by this title, or accruing under any former internal revenue law, which have not been duly paid by stamp at the time and in the manner provided by law. Such authority shall extend to and include the following:

(1) TAXES SHOWN ON RETURN.—* * *

* * * * * * *

(4) ERRONEOUS CREDIT UNDER SECTION [39 OR 43] *32 OR 34*.—If on any return or claim for refund of income taxes under subtitle A there is an overstatement of the credit allowable by section [39] *34* (relating to certain uses of gasoline and special fuels) or section [43] *32* (relating to earned income), the amount so overstated which is allowed against the tax shown on the return or which is allowed as a credit or refund may be assessed by the Secretary in the same manner as in the case of a mathematical or clerical error appearing upon the return, except that the provisions of section 6213(b)(2) (relating to abatement of mathematical or clerical error assessments) shall not apply with regard to any assessment under this paragraph.

(b) AMOUNT NOT TO BE ASSESSED.—

[(1) ESTIMATED INCOME TAX.—No unpaid amount of estimated tax under section 6153 or 6154 shall be assessed.] *(1) ESTIMATED INCOME TAX.—No unpaid amount of estimated income tax required to be paid under section 6154 or 6654 shall be assessed.*

(2) FEDERAL UNEMPLOYMENT TAX.—No unpaid amount of Federal unemployment tax for any calendar quarter or other period of a calendar year, computed as provided in section 6157, shall be assessed.

* * * * * * *

Subchapter B—Deficiency Procedures in the Case of Income, Estate, Gift, and Certain Excise Taxes.

* * * * * * *

SEC. 6211. DEFINITION OF A DEFICIENCY.

(a) IN GENERAL.—* * *

(b) RULES FOR APPLICATION OF SUBSECTION (a).—For purposes of this section—

(1) The tax imposed by subtitle A and the tax shown on the return shall both be determined without regard to payments

on account of estimated tax, without regard to the credit under section 31, without regard to [so much of the credit under section 32 as exceeds 2 percent of the interest on obligations described in section 1451] *the credit under section 33,* and without regard to any credits resulting from the collection of amounts assessed under section 6851 (relating to termination assessments).

* * * * * * *

(4) The tax imposed by subtitle A and the tax shown on the return shall both be determined without regard to the credit under section [39,] *34,* unless, without regard to such credit, the tax imposed by subtitle A exceeds the excess of the amount specified in subsection (a)(1) over the amount specified in subsection (a)(2).

* * * * * * *

SEC. 6213. RESTRICTIONS APPLICABLE TO DEFICIENCIES: PETITION TO TAX COURT.

(a) Time for Filing Petition and Restriction on Assessment.—* * *

* * * * * * *

(h) Cross References.—

(1) For assessment as if a mathematical error on the return, in the case of erroneous claims for income tax prepayment credits, see section 6201(a)(3).

(2) For assessments without regard to restrictions imposed by this section in the case of—

(A) Recovery of foreign income taxes, see section 905(c).

(B) Recovery of foreign estate tax, see section 2016.

(3) For assessment as if a mathematical error on the return, in the case of erroneous claims for credits under section [39,] *32 or 34,* see section 6201(a)(4).

(4) For provision that this subchapter shall not apply in the case of computational adjustments attributable to partnership items, see section 6230(a).

* * * * * * *

Subchapter C—Tax Treatment of Partnership Items

Sec. 6221. Tax treatment determined at partnership level.

* * * * * * *

Sec 6230. Additional administrative provisions.
Sec 6231. Definitions and special rules.
Sec 6232. Extension of subchapter to windfall profit tax.
"Sec. 6233. Extension to entities filing partership returns, etc."

* * * * * * *

SEC. 6230. ADDITIONAL ADMINISTRTATIVE PROVISIONS

(a) Normal Deficiency Proceedings Do Not Apply to Computational Adjustments.— * * *

* * * * * * *

(c) Claims Arising Out of Erroneous Computation, Etc.—

(1) IN GENERAL.—A partner may file a claim for refund on the grounds that—

(A) the Secretary erroneously computed any computational adjustment necessary—

(i) to make the partnership items on the partner's return consistent with the treatment of the partnership items on the partnership return, or

(ii) to apply to the partner a settlement, a final partership administrative adjustment, or the decision of a court in an action brought under section 6226 or section 6228(a), or

(B) the Secretary failed to allow a credit or to make a refund to the partner in the amount of the overpayment attributable to the application to the partner of a settlement, a final partnership administrative adjustment, or the decision of a court in an action brought under section 6226 or section 6228(a) [(or erroneously computed the amount of any such credit or refund)].

* * * * * * *

SEC 6231. DEFINITIONS AND SPECIAL RULES.

(a) DEFINITIONS.—For purposes of this subchapter—

(1) PARTNERSHIP.— * * *

* * * * * * *

(9) PASS-THRU PARTNER.—The term "pass-thru partner" means a partnership, estate, trust, [electing small business corporation] *S corporation,* nominee, or other similar person through whom other persons hold an interest in the partnership with respect to which proceedings under this subchapter are conducted.

* * * * * * *

(f) SPECIAL RULE FOR LOSSES AND CREDITS OF FOREIGN PARTNERSHIPS.—Except to the extent otherwise provided in regulations, in the case of any partnership the tax matters partner of which resides outside the United States or the books of which are maintained outside the United States, no loss or credit shall be allowable to any partner unless section 6031 is complied with for the partnership's taxable year in which such [deduction] *loss* or credit arose at such time as the Secretary prescribes by regulations.

* * * * * * *

SEC. 6233. EXTENSION TO ENTITIES FILING PARTNERSHIP RETURNS, ETC.

(a) GENERAL RULE.—If a partnership return is filed by an entity for a taxable year but it is determined that the entity is not a partnership for such year, then, to the extent provided in regulations, the provisions of this subchapter are hereby extended in respect of such year to such entity and its items and to persons holding an interest in such entity.

(b) SIMILAR RULES IN CERTAIN CASES.—If for any taxable year—

(1) an entity files a return as an S corporation but it is determined that the entity was not an S corporation for such year, or

(2) a partnership return or S corporation return is filed but it is determined that there is no entity for such taxable year,

then, to the entent provided in regulations, rules similar to the rules of subsection (a) shall apply.

CHAPTER 64—COLLECTION

* * * * * * *

Subchapter B—Receipt of Payment

* * * * * * *

SEC. 6311. PAYMENT BY CHECK OR MONEY ORDER.

(a) Authority To Receive.—It shall be lawful for the Secretary to receive for internal revenue taxes, or in payment for internal revenue stamps, checks or money orders, to the extent and under the conditions provided in regulations prescribed by the Secretary.

(b) Check or Money Order Unpaid.—

(1) Ultimate liability.—If a check or money order so received is not duly paid, the person by whom such check or money order has been tendered shall remain liable for the payment of the tax or for the stamps, and for all legal penalties and additions, to the same extent as if such check or money order had not been tendered.

(2) Liability of banks and others.—If any certified, treasurer's or cashier's check *(or other guaranteed draft)* or any money order so received is not duly paid, the United States shall, in addition to its right to exact payment from the party originally indebted therefor, have a lien for the amount of such check *(or draft)* upon all the assets of [the bank or trust company] *the financial institution* on which drawn or for the amount of such money order upon all the assets of the issuer thereof; and such amount shall be paid out of such assets in preference to any other claims whatsoever against such [bank] *financial institution* or issuer except the necessary costs and expenses of administration and the reimbursement of the United States for the amount expended in the redemption of the circulating notes of such [bank] *financial institution.*

* * * * * * *

Subchapter D—Seizure of Property for Collection of Taxes

* * * * * * *

SEC. 6334. PROPERTY EXEMPT FROM LEVY.

(a) Enumeration.—* * *

* * * * * * *

(c) No Other Property Exempt.—Notwithstanding any other law of the United States *(including section 207 of the Social Secu-*

rity Act), no property or rights to property shall be exempt from levy other than the property specifically made exempt by subsection (a).

* * * * * * *

CHAPTER 64—COLLECTION

* * * * * * *

Subchapter E—Collection of State Individual Taxes

* * * * * * *

SEC. 6362. QUALIFIED STATE INDIVIDUAL INCOME TAXES.

(a) QUALIFIED STATE INDIVIDUAL INCOME TAXES DEFINED.—* * *

* * * * * * *

(c) QUALIFIED RESIDENT TAX WHICH IS A PERCENTAGE OF THE FEDERAL TAX.—

(1) IN GENERAL.—A tax meets the requirements of this subsection only if it is imposed as a specified percentage of the excess of the taxes imposed by chapter 1 over the sum of the credits allowable under part IV of subchapter A of chapter 1 (other than the credits allowable by sections 31 and [39] *34).*

* * * * * * *

(e) REQUIREMENTS RELATING TO RESIDENCE.—A tax imposed by a State meets the requirements of this subsection only if for purposes of such tax—

(1) RESIDENT INDIVIDUAL.—* * *

* * * * * * *

(5) CURRENT COLLECTION OF TAX.—In applying chapter 24 (relating to withholding [and section 6015 and other provisions relating to declarations of estimated income] *and provisions relating to estimated income tax* (and amendments thereto)—

(A) in the case of a resident tax, an individual is treated as subject to the tax if he reasonably expects to reside in the State for 30 days or more or if such individual is a resident of the State (within the meaning of paragraph (1), (2), or (3)), and

(B) in the case of a nonresident tax, an individual is treated as subject to the tax if he reasonably expects to receive wage and other business income (within the meaning of subsection (d)(2)) for 30 days or more during the taxable year.

* * * * * * *

CHAPTER 65—ABATEMENTS, CREDITS, AND REFUNDS

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Subchapter A—Procedure in General

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SEC. 6401. AMOUNTS TREATED AS OVERPAYMENTS.

(a) Assessment and Collection After Limitation Period.— * * *

(b) Excessive Credits.—[If the amount allowable as credits under sections 31 (relating to tax withheld on wages, interest, dividends, and patronage dividends), 39 (relating to certain uses of gasoline, special fuels, and lubricating oil), and 43 (relating to earned income credit), exceeds the tax imposed by subtitle A (reduced by the credits allowable under subpart A of part IV of subchapter A of chapter 1, other than the credits allowable under sections 31, 39 and 43), the amount of such excess shall be considered an overpayment.] *If the amount allowable as credits under subpart C of part IV of subchapter A of chapter 1 (relating to refundable credits) exceeds the tax imposed by subtitle A (reduced by the credits allowable under subparts A, B, and D of such part IV), the amount of such excess shall be considered an overpayment.* For purposes of the preceding sentence, any credit allowed under [paragraph (1) of section 32] *Section 33* (relating to withholding of tax on nonresident aliens and on foreign corporations) to a nonresident alien individual for a taxable year with respect to which an election under section 6013(g) or (h) is in effect shall be treated as an amount allowable as a credit under section 31.

* * * * * * *

SEC. 6405. REPORTS OF REFUNDS AND CREDITS.

(a) By Treasury to Joint Committee.—No refund or credit of any income, war profits, excess profits, estate, or gift tax, or any tax imposed with respect to public charities, private foundations, operators' trust funds, pension plans, or real estate investment trusts under chapter 41, 42, 43, or 44, in excess of $200,000 shall be made until after the expiration of 30 days from the date upon which a report giving the name of the person to whom the refund or credit is to be made, the amount of such refund or credit, and a summary of the facts and the decision of the Secretary, is submitted to the Joint Committee on Taxation.

* * * * * * *

(d) Refunds Attributable to Certain Disaster Losses.—If any refund or credit of income taxes is attributable to the taxpayer's election under section [165(h)]*165(i)* to deduct a disaster loss for the taxable year immediately preceding the taxable year in which the disaster occurred, the Secretary is authorized in his discretion to make the refund or credit, to the extent attributable to such election, without regard to the provisions of subsection (a) of this section. If such refund or credit is made without regard to subsection (a), there shall thereafter be submitted to such Joint Committee a report containing the matter specified in subsection (a) as soon as the Secretary shall determine the correct amount of the tax for the taxable year for which the refund or credit is made.

* * * * * * *

Subchapter B—Rules of Special Application

* * * * * * *

SEC. 6411. TENTATIVE CARRYBACK AND REFUND ADJUSTMENTS.

[(a) APPLICATION FOR ADJUSTMENT.—A taxpayer may file an application for a tentative carryback adjustment of the tax for the prior taxable year affected by a net operating loss carryback provided in section 172(b), by an investment credit carryback provided in section 46(b), by a work incentive program carryback provided in section 50A(b), by a new employee credit carryback provided in section 53(b), by a research credit carryback provided in section 44F(g)(2), by an employee stock ownership credit carryback provided by section 44G(b)(2) or by a capital loss carryback provided in section 1212(a)(1), from any taxable year. The application shall be verified in the manner prescribed by section 6065 in the case of a return of such taxpayer, and shall be filed, on or after the date of filing of the return for the taxable year of the net operating loss, net capital loss, unused investment credit, unused work incentive program credit, unused new employee credit, unused research credit, or unused employee stock ownership credit from which the carryback results and within a period of 12 months from the end of such taxable year (or, with respect to any portion of an investment credit carryback, a work incentive program carryback, a new employee credit carryback, a research credit carryback, or employee stock ownership credit carryback from a taxable year attributable to a net operating loss carryback or a capital loss carryback (or, in the case of a work incentive program carryback, to an investment credit carryback, or, in the case of a new employee credit carryback, to an investment credit carryback or a work incentive program carryback, or in the case of a research credit carryback, to an investment credit carryback, a work incentive program carryback, or a new employee credit carryback, or, in the case of an employee stock ownership credit carryback, to an investment credit carryback, a new employee credit carryback or a research and experimental credit carryback) from a subsequent taxable year within a period of 12 months from the end of such subsequent taxable year), in the manner and form required by regulations prescribed by the Secretary. The application shall set forth in such detail and with such supporting data and explanation as such regulations shall require—

> [(1) The amount of the net operating loss, net capital loss, unused investment credit, unused work incentive program credit, unused new employee credit, unused research credit, or unused employee stock ownership credit;]

(a) APPLICATION FOR ADJUSTMENT.—A taxpayer may file an application for a tentative carryback adjustment of the tax for the prior taxable year affected by a net operating loss carryback provided in section 172(b), by a business credit carryback provided in section 39, by a research credit carryback provided in section 30(g)(2) or by a capital loss carryback provided in section 1212(a)(1), from any taxable year. The application shall be verified in the manner prescribed by section 6065 in the case of a return of such taxpayer and shall be filed, on or after the date of filing for the return for the

taxable year of the net operating loss, not capital loss, or unused business credit from which the carryback results and within a period of 12 months after such taxable year or, with respect to any portion of a research credit carryback or a business credit carryback attributable to a net operating loss carryback or a net capital loss carryback from a subsequent taxable year, within a period of 12 months from the end of such subsequent taxable year (or, with respect to any portion of a business credit carryback attributable to a research credit carryback from a subsequent taxable year within a period of 12 months from the end of such subsequent taxable year), in the manner and form required by regulations prescribed by the Secretary. The applications shall set forth in such detail and with such supporting data and explanation as such regulations shall require—

(1) The amount of the net operating loss, net capital loss, unused research credit, or unused business credit;

(2) The amount of the tax previously determined for the prior taxable year affected by such carryback, the tax previously determined being ascertained in accordance with the method prescribed in section 1314(a);

(3) The amount of decrease in such tax, attributable to such carryback, such decrease being determined by applying the carryback in the manner provided by law to the items on the basis of which such tax was determined;

(4) The unpaid amount of such tax, not including any amount required to be shown under paragraph (5);

(5) The amount, with respect to the tax for the taxable year immediately preceding the taxable year from which the carryback is made, as to which an extention of time for payment under section 6164 is in effect; and

(6) Such other information for purposes of carrying out the provisions of this section as may be required by such regulations.

An application under this subsection shall not constitute a claim for credit or refund.

(b) ALLOWANCE OF ADJUSTMENTS.—Within a period of 90 days from the date on which an application for a tentative carryback adjustment is filed under subsection (a), or from the last day of the month in which falls the last date prescribed by law (including any extension of time granted the taxpayer) for filing the return for the taxable year of the net operating loss, net capital loss, [unused investment credit, unused work incentive program credit, unused new employee credit, unused research credit, or unused employee stock ownership credit] *unused research credit, or unused business credit* from which such carryback results, whichever is the later, the Secretary shall make, to the extent he deems practicable in such period, a limited examination of the application, to discover omissions and errors of computation therein, and shall determine the amount of the decrease in the tax attributable to such carryback upon the basis of the application and the examination, except that the Secretary may disallow, without further action, any application which he finds contains errors of computation which he deems cannot be corrected by him within such 90-day period or material omissions. Such decrease shall be applied against any unpaid amount of the tax decreased (including any amount of such tax as to which an extension of time under section 6164 is in effect) and any remainder shall be credited against any unsatisfied amount of any tax for the taxable year immediately preceding the taxable year of the net operating loss, net capital loss, [unused investment credit, unused work incentive program credit, unused new employee credit, unused research credit, or unused employee stock ownership credit] *unused research credit, or unused business credit* the time for payment of which tax is extended under section 6164. Any remainder shall, within such 90-day period, be either credited against any tax or installment thereof then due from the taxpayer, or refunded to the taxpayer.

(c) CONSOLIDATED RETURNS.—If the corporation seeking a tentative carryback adjustment under this section, made or was required to make a consolidated return, either for the taxable year within which the net operating loss, net capital loss, [unused investment credit, unused work incentive program credit, unused new employee credit, unused research credit, or unused employee stock ownership credit] *or unused business credit* arises, or for the preceding taxable year affected by such loss or credit, the provisions of this section shall apply only to such extent and subject to such conditions, limitations, and exceptions as the Secretary may by regulations prescribe.

* * * * * * *

SEC. 6412. FLOOR STOCKS REFUNDS.

(a) IN GENERAL.—

[(1) TRUCKS, TIRES, TUBES, TREAD RUBBER, AND GASOLINE.—Where before October 1, 1988, any article subject to the tax imposed by section 4061(a)(1) 4071(a)(1), (3), or (4), or 4081 has been sold by the manufacturer, producer, or importer and on such date is held by a dealer and has not been used and is intended for sale (or, in the case of tread rubber, is intended for sale or is held for use),]

(1) TIRES AND GASOLINE.—Where before October 1, 1988, any article subject to the tax imposed by section 4071 or 4081 has been sold by the manufacturer, producer, or importer and on such date is held by a dealer and has not been used and is intended for sale, there shall be credited or refunded (without interest) to the manufacturer, producer, or importer an amount equal to the difference between the tax paid by such manufacturer, producer, or importer on his sale of the article and the amount of tax made applicable to such article on and after October 1, 1988, if claim for such credit or refund is filed with the Secretary on or before March 31, 1989, based upon a request submitted to the manufacturer, producer, or importer before January 1, 1989, by the dealer who held the article in respect of which the credit or refund is claimed, and, on or before March 31, 1989, reimbursement has been made to such dealer by such manufacturer, producer, or importer for the tax reduction on such article or written consent has been obtained from such dealer to allowance of such credit or refund. No credit or refund shall be allowable under this paragraph with respect to gasoline in retail stocks held at the place where intended to be

sold at retail, nor with respect to gasoline held for sale by a producer or importer of gasoline. [No credit or refund shall be allowable under this paragraph with respect to inner tubes for bicycle tires (as defined in section 4221(e)(4)(B)).]

(2) DEFINITIONS.—For purposes of this section—

[(A) the term "dealer" includes a wholesaler, jobber, distributor, or retailer, or, in the case of tread rubber subject to tax under section 4071(a)(4), includes any person (other than the manufacturer, producer, or importer thereof) who holds such tread rubber for sale or use.]

(A) The term "dealer" includes a wholesaler, jobber, distributor, or retailer.

(B) An article shall be considered as "held by a dealer" if title thereto has passed to such dealer (whether or not delivery to him has been made), and if for purposes of consumption title to such article or possession thereof has not at any time been transferred to any person other than a dealer.

(b) LIMITATION ON ELIGIBILITY FOR CREDIT OR REFUND.—No manufacturer, producer, or importer shall be entitled to credit or refund under subsection (a) unless he has in his possession such evidence of the inventories with respect to which the credit or refund is claimed as may be required by regulations prescribed under this section.

(c) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable in respect of the taxes imposed by sections [4061, 4071,] *4071* and 4081 shall, insofar as applicable and not inconsistent with subsections (a) and (b) of this section, apply in respect of the credits and refunds provided for in subsection (a) to the same extent as if such credits or refunds constituted overpayments of such taxes.

SEC. 6416. CERTAIN TAXES ON SALES AND SERVICES.

(a) CONDITION TO ALLOWANCE.—

(1) GENERAL RULE.—No credit or refund of any overpayment of tax imposed by chapter 31 (relating to retail excise taxes), or chapter 32 (manufacturers taxes) shall be allowed or made unless the person who paid the tax establishes, under regulations prescribed by the Secretary, that he—

(A) has not included the tax in the price of the article with respect to which it was imposed and has not collected the amount of the tax from the person who purchased such article;

(B) has repaid the amount of the tax to the ultimate purchaser of the article;

(C) in the case of an overpayment under subsection (b)(2)[, (b)(3)(C) or (D), or (b)(4)] of this section—

(i) has repaid or agreed to repay the amount of the tax to the ultimate vendor of the article, or

(ii) has obtained the written consent of such ultimate vendor to the allowance of the credit or the making of the refund; or

(D) has filed with the Secretary the written consent of the person referred to in subparagraph (B) to the allowance of the credit or the making of the refund.

(2) EXCEPTIONS.—This subsection shall not apply to—

(A) the tax imposed by section 4041 (relating to tax on special fuels) on the use of any liquid, and

(B) an overpayment of tax under paragraph (1), (3) (A) [or (B), or (5)], *(4), (5), or (6)* of subsection (b) of this section.

[(3) SPECIAL RULES.—For purposes of this subsection—

[(A) in any case in which the Secretary determines that an article is not taxable, the term "ultimate purchaser" (when used in paragraph (1)(B) of this subsection) includes a wholesaler, jobber, distributor, or retailer who, on the 15th day after the date of such determination, holds such artile for sale; but only if claim for credit or refund by reason of this subparagraph is filed on or before the day for filing the return with respect to the taxes imposed under chapter 32 for the first period which begins more than 60 days after the date of such determination; and

[(B) in applying paragraph (1)(C) to any overpayment under paragraph (2)(F), (3)(C), or (4) of subsection (b), the term "ultimate vendor" means the ultimate vendor of the other article.]

(3) SPECIAL RULE.—For purposes of this subsection, in any case in which the Secretary determines that an article is not taxable, the term "ultimate purchaser" (when used in paragraph (1)(B) of this subsection) includes a wholesaler, jobber, distributor, or retailer who, on the 15th day after the date of such determination, holds such article for sale; but only if claim for credit or refund by reason of this paragraph is filed on or before the date for filing the return with respect to the taxes imposed under chapter 32 for the first period which begins more than 60 days after the date on such determination.

(b) SPECIAL CASES IN WHICH TAX PAYMENTS CONSIDERED OVERPAYMENTS.—Under regulations prescribed by the Secretary, credit or refund (without interest) shall be allowed or made in respect of the overpayments determined under the following paragraphs:

(1) PRICE READJUSTMENTS.—

(A) IN GENERAL.—Except as provided in subparagraph (B) or (C), if the price of any article in respect of which a tax, based on such price, is imposed by chapter 32, is readjusted by reason of the return or repossession of the article of a covering or container, or by a bona fide discount, rebate, or allowance, including a readjustment for local advertising (but only to the extent provided in section 4216(e)(2) and (3)), the part of the tax proportionate to the part of the price repaid or credited to the purchaser shall be deemed to be an overpayment.

(B) FURTHER MANUFACTURE.—Subparagraph (A) shall not apply in the case of an article in respect of which tax was computed under section 4223(b)(2); but if the price for which such article was sold is readjusted by reason of the return or repossession of the article, the part of the tax proportionate to the part of such price repaid or credited to the purchaser shall be deemed to be an overpayment.

(C) ADJUSTMENT OF TIRE PRICE.—No credit or refund of any tax imposed by [section 4071(a) (1) or (2) or section 4071(b)] *subsection (a) or (b) of section 4071* shall be allowed or made by reason of an adjustment of a tire pursuant to a warranty or guarantee.

(2) SPECIFIED USES AND RESALES.—The tax paid under chapter 32 (or under paragraph (1)(A) or (2)(A) of section 4041(a) or under section 4051) in respect of any article (other than coal taxable under section 4121) shall be deemed to be an overpayment if such article was, by any person—

(A) exported [(except in any case to which subsection (g) applies)];

(B) used or sold for use as supplies for vessels or aircraft;

(C) sold to a State or local government for the exclusive use of a State or local government;

(D) sold to a nonprofit educational organization for its exclusive use;

[(E) in the case of a tire or inner tube, resold for use as provided in subparagraph (C) of paragraph (3) (or in the case of the tread rubber on a recapped or retreaded tire, resold for use as provided in subparagraph (D) of paragraph (3)), and the other article referred to in such subparagraph is by any person exported or sold as provided in such subparagraph;

[(F) in the case of any article taxable under section 4061(b) (other than spark plugs and storage batteries), used or sold for use as repair or replacement parts or accessories for farm equipment (other than equipment taxable under section 4061(a));

[(G) in the case of tread rubber in respect of which tax was paid under section 4071(a)(4)—

[(i) used or sold for use otherwise than in the recapping or retreading of tires of the type used on highway vehicles (as defined in section 4072(c)),

[(ii) destroyed, scrapped, wasted, or rendered useless in the recapping or retreading process,

[(iii) used in the recapping or retreading of a tire the sale of which is later adjusted pursuant to a warranty or guarantee, in which case the overpayment shall be in proportion to the adjustment in the sales price of such tire, or

[(iv) used in the recapping or retreading of a tire, if such tire is by any person exported, used or sold for use as supplies for vessels or aircraft, sold to a State or local government for the exclusive use of a State or local government, or sold to a nonprofit educational organization for its exclusive use,

unless credit or refund of such tax is allowable under paragraph (3);

[(H) in the case of gasoline, used or sold for use in production of special fuels referred to in section 4041;

[(I) in the case of any article taxable under section 4061(b), sold for use by the purchaser on or in connection with an automobile bus;

[(J) in the case of a box, container, receptacle, bin, or other similar article taxable under section 4061(a), sold to any person for use as described in section 4063(a)(7); or

[(K) in the case of any article taxable under section 4061(b); sold on or in connection with the first retail sale of a light-duty truck, as described in section 4061(a)(2), if credit or refund of such tax is not available under any other provisions of law;

[(L) in the case of any tire or inner tube taxable under paragraph (1) or (3) of section 4071(a), sold to any person for use as described in section 4221(e)(5)(A); or

[(M) in the case of tread rubber taxable under paragraph (4) of section 4071(a), used in the recapping or retreading of a tire sold to any person for use on or in connection with a qualified bus (as defined in section 4221(d)(7)).

Subparagraphs (C) and (D) shall not apply in the case of any tax paid under section 4064.]

(E) in the case of any tire taxable under section 4071(a), sold to any person for use as described in section 4221(e)(3); or

(F) in the case of gasoline, used or sold for use in the production of special fuels referred to in section 4041.

Subparagraphs (C) and (D) shall not apply in the case of any tax paid under section 4064.

(3) TAX-PAID ARTICLES USED FOR FUTHER MANUFACTURE, ETC.—If the tax imposed by chapter 32 has been paid with respect to the sale of any article (other than coal taxable under section 4121) by the manufacturer, producer, or importer thereof and such article is sold to a subsequent manufacturer or producer before being used, such tax shall be deemed to be an overpayment by such subsequent manufacturer or producer if—

[(A) in the case of any article other than an article to which subparagraph (B), (C), (D), or (E) applies, such article is used by the subsequent manufacturer or producer as material in the manufacture or production of, or as a component part of—

[(i) another article taxable under chapter 32, or

[(ii) an automobile bus chassis or an automobile bus body, manufactured or produced by him;

[(B) in the case of a part or accessory taxable under section 4061(b), such article is used by the subsequent manufacturer or producer as material in the manufacture or production of, or as a component part of, any other article manufactured or produced by him;

[(C) in the case of a tire or inner tube taxable under section 4071, such article is sold by the subsequent manufacturer or producer on or in connection with, or with the sale of, any other article manufactured or produced by him and such other article is—

[(i) an automobile bus chassis or an automobile bus body, or

[(ii) by any person exported, sold to a State or local government for the exclusive use of a State or local government, sold to a nonprofit educational organization for its exclusive use, or used or sold for use as supplies for vessels or aircraft;

[(D) in the case of tread rubber in respect of which tax was paid under section 4071(a)(4) used in the recapping or retreading of a tire, such tire is sold by the subsequent manufacturer or producer on or in connection with, or with the sale of, any other article manufactured or produced by him and such other article is by any person exported, sold to a State or local government for the exclusive use of a State or local government, sold to a nonprofit educational organization for its exclusive use, or used or sold for use as supplies for vessels or aircraft, unless credit or refund of such tax is allowable under subparagraph (C);

[(E) in the case of—

[(i) a bicycle tire (as defined in section 4221(e)(4)(B)), or

[(ii) an inner tube for such a tire,

such article is used by the subsequent manufacturer or producer as material in the manufacture or production of, or as a component part of, a bicycle (other than a rebuilt or reconditioned bicycle); or

[(F) in the case of gasoline taxable under section 4081, such gasoline is used by the subsequent manufacturer or producer, for nonfuel purposes, as a material in the manufacture or production of any other article manufactured or produced by him.

[For purposes of subparagraphs (A) and (B), an article shall be treated as having been used as a component part of another article if, had it not been broken or rendered useless in the manufacture or production of such other article, it would have been so used.]

(A) in the case of any article other than gasoline taxable under section 4081, such article is used by the subsequent manufacturer or producer as material in the manufacture or production of, or as a component part of—

(i) another article taxable under chapter 32, or

(ii) an automobile bus chassis or an automobile bus body,

manufactured or produced by him; or

(B) in the case of gasoline taxable under section 4081, such gasoline is used by the subsequent manufacturer or producer, for nonfuel purposes, as a material in the manufacture or production of any other article manufactured or produced by him.

* * * * * * *

[(4) TIRES, INNER TUBES.—If—

[(A) a tire or inner tube taxable under section 4071, or a recapped or retreaded tire in respect of which tax under section

4071(a)(4) was paid on the tread rubber used in the recapping or retreading, is sold by the manufacturer, producer, or importer thereof on or in connection with, or with the sale of, any other article manufactured or produced by him, and

[(B) such other article is—

[(i) an automobile bus chassis or an automobile bus body, or

[(ii) by any person exported, sold to a State or local government for the exclusive use of a State or local government, sold to a nonprofit educational organization for its exclusive use, or used or sold for use as supplies for vessels or aircraft,

[any tax imposed by chapter 32 in respect of such tire or inner tube which has been paid by the manufacturer, producer, or importer thereof shall be deemed to be an overpayment by him.]

(4) Tires.—If—

(A) the tax imposed by section 4071 has been paid with respect to the sale of any tire by the manufacturer, producer, or importer thereof, and

(B) such tire is sold by any person on or in connection with, or with the sale of, any other article, such tax shall be deemed to be an overpayment by such person if such other article is—

(i) an automobile bus chassis or an automobile bus body, or

(ii) by such person exported, sold to a State or local government for the exclusive use of a State or local government, sold to a nonprofit educational organization for its exclusive use, or used or sold for use as supplies for vessels or aircraft.

(5) Return of certain installment accounts. If—

(A) tax was paid under section 421(e)(1) in respect of any installment account,

(B) such account is, under the agreement under which the account was sold, returned to the person who sold such account, and

(C) the consideration is readjusted as provided in such agreement.

the part of the tax paid under section 4216(e)(1) allocable to the part of the consideration repaid or credited to the purchaser of such account shall be deemed to be an overpayment.

This subsection shall apply in respect of an article only if the exportation or use referred to in the applicable provision of this subsection occurs before any other use, or, in the case of a sale or resale, the use referred to in the applicable provision of this subsection is to occur before any other use.

(6) Truck chassis, bodies, and semi-trailers used for further manufacture.—If—

(A) the tax imposed by section 4051 has been paid with respect to the sale of any article, and

(B) before any other use, such article is by any person used as a component part of another article taxable under section 4051 manufactured or produced by him,

such tax shall be deemed to be an overpayment by such person. For purposes of the preceding sentence, an article shall be treated as having been used as a component part of another article if, had it not been broken or rendered useless in the manufacture or production of such other article, it would have been so used.

[(c) Credit for Tax Paid on Tires or Inner Tubes.—If tires or inner tubes on which tax has been paid under chapter 32 are sold on or in connection with, or with the sale of, another article taxable under chapter 32, there shall (under regulations prescribed by the Secretary) be credited (without interest) against the tax imposed on the sale of such other article, an amount determined by multiplying the applicable percentage rate of tax for such other article by—

[(1) the purchase price (less, in the case of tires, the part of such price attributable to the metal rim or rim base) if such tires or inner tubes were taxable under section 4071 (relating to tax on tires and inner tubes); or

[(2) if such tires or inner tubes were taxable under section 4218 (relating to use by manufacturer, producer, or importer), the price (less, in the case of tires, the part of such price attributable to the metal rim or rim base) at which such or similar tires or inner tubes are sold, in the ordinary course of trade, by manufacturers, producers, or importers thereof, as determined by the Secretary.]

[(e)] *(c)* Refund to Exporter or Shipper.—Under regulations prescribed by the Secretary the amount of any tax imposed by chapter 31, or chapter 32 erroneously or illegally collected in respect of any article exported to a foregn country or shipped to a possession of the United States may be refunded to the exporter or shipper thereof, if the person who paid such tax waives his claim to such amount.

[(f)] *(d)* Credit on Returns.—Any person entitled to a refund of tax imposed by chapter 31 or 32, paid to the Secretary may, instead of filing a claim for refund, take credit therefor against taxes imposed by such chapter due on any subsequent return.

[(g) Trucks, Buses, Tractors, etc.—Under regulations prescribed by the Secretary, subsection (b)(2)(A) shall apply, in the case of any article subject to the tax imposed by section 4061(a) only if the article with respect to which the tax was paid was sold by the manufacturer, producer, or importer for export after receipt by him of notice of intent to export or to resell for export.]

[(h)] *(e)* Accounting Procedures for Like Articles.—Under regulations prescribed by the Secretary, if any person uses or resells like articles, then for purposes of this section the manufacturer, producer, or importer of any such article may be identified, and the amount of tax paid under chapter 32 in respect of such article may be determined—

(1) on a first-in-first-out basis,

(2) on a last-in-first-out basis, or

(3) in accordance with any other consistent method approved by the Secretary.

[(i)]*(f)* Meaning of Terms.—For purposes of this section, any term used in this section has the same meaning as when used in chapter 31, 32, or 33, as the case may be.

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SEC. 6420. GASOLINE USED ON FARMS.

(a) Gasoline.—* * *

* * * * * * *

(g) Income Tax Credit in Lieu of Payment.—

(1) Persons not subject to income tax.—Payment shall be made subsection (a) only to—

(A) the United States or an agency or instrumentality thereof, a State, a political subdivision of a State, or an agency or instrumentality of one or more States or political subdivisions, or

(B) an organization exempt from tax under section 501(a) (other than an organization required to make a return of the tax imposed under subtitle A for its taxable year).

(2) Allowance of credit against income tax.—For allowance of credit against the tax imposed by subtitle A, see section [39] *34*.

* * * * * * *

SEC. 6421. GASOLINE USED FOR CERTAIN NONHIGHWAY PURPOSES OR BY LOCAL TRANSIT SYSTEMS.

(a) Nonhighway Uses.— * * *

* * * * * * *

(i) Income Tax Credit in Lieu of Payment.—

(1) Persons not subject to income tax.—Payment shall be made under subsections (a) and (b) only to—

(A) the United States or an agency or instrumentality thereof, a State, a political subdivision of a State, or an agency or instrumentality of one or more States or political subdivisions, or

(B) an organization exempt from tax under section 501(a) (other than an organization required to make a return of the tax imposed under subtitle A for its taxable year).

(2) Exception.—Paragraph (1) shall not apply to a payment of a claim filed under subsection (c)(2).

(3) Allowance of credit against income tax.—For allowance of credit against the tax imposed by subtitle A, see section [39]*34*.

* * * * * * *

SEC. 6427. FUELS NOT USED FOR TAXABLE PURPOSES.

(a) Nontaxable Uses.—* * *

* * * * * * *

(f) Gasoline Used to Produce Certain Alcohol Fuels.—

(1) In general.—Except as provided in subsection (i), if any gasoline on which a tax is imposed by section 4081 at the rate of 9 cents a gallon is used by any person in producing a mixture described in section 4081(c) which is sold or used in such

person's trade or business, the Secretary shall pay (without interest) to such person an amount equal to the amount determined at the rate of [5] *$4\frac{5}{9}$* cents a gallon. The preceding sentence shall not apply with respect to any mixture sold or used after December 31, 1992.

(2) COORDINATION WITH OTHER REPAYMENT PROVISIONS.— No amount shall be payable under paragraph (1) with respect to any gasoline with respect to which an amount is payable under subsection (d) or (e) of this section or under section 6420 or 6421.

* * * * * * *

(i) INCOME TAX CREDIT IN LIEU PAYMENT.—

(1) PERSONS NOT SUBJECT TO INCOME TAX.— Payment shall be made under this section only to—

(A) the United States or an agency or instrumentality thereof a state, a political subdivision of a State, or any agency or instrumentality of one or more States or political subdivisions, or

(B) an organization exempt from tax under section 501(a) (other than an organization required to make a return of the tax imposed under subtitle A for its taxable year).

(2) EXCEPTION.—Paragraph (1) shall not apply to a payment of a claim filed under subsection(g)(2).

(3) ALLOWANCE OF CREDIT AGAINST INCOME TAX.—

For allowances of credit against the income tax imposed by subtitle A for fuel used or resold by the purchaser, see section [39]*34*.

(j) SPECIAL RULES WITH RESPECT TO NONCOMMERCIAL AVIATION.—For purposes of subsection (a), in the case of gasoline—

(1) on which tax was imposed under section 4041(c)(2).

(2) on which tax was not imposed under section 4081, and

(3) which was not used as an off-highway business use (within the meaning of section 6421(d)(2)),

the amount of the payment under subsection (a) shall be an amount equal to the amount of gasoline used as described in subsection (a) or resold multiplied by the rate equal to the excess of the rate of tax imposed by section 4041(c)(2) over the rate of tax imposed by section 4081.

[(j)] *(k)* REGULATIONS.— The Secretary may by regulations prescribe the conditions, not inconsistent with the provisions of this section, under which payments may be made under this section.

[(k)] *(l)* TERMINATIONS OF SUBSECTIONS (a), (b), (c), AND (d).—Subsections (a), (b), (c), and (d) shall only apply with respect to fuels purchased before October 1, 1988.

[(k)]*(m)* CROSS REFERENCES.—

(1) For civil penalty for excessive claims under this section, see section 6675.

(2) For fraud penalties, etc., see chapter 75 (section 7201 and following, relating to crimes, other offenses, and forfeitures).

(3) For treatment of an Indian tribal government as a State (and a subdivision of an Indian tribal government as a political subdivision of a State), see section 7871.

CHAPTER 66—LIMITATIONS

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Subchapter A—Limitations on Assessment and Collection

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SEC. 6501. LIMITATIONS ON ASSESSMENT AND COLLECTION.

(a) GENERAL RULE.—* * *

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(c) EXCEPTIONS.—

(1) FALSE RETURN.—In the case of a false or fraudulent return with the intent to evade tax, the tax may ba assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time.

(2) WILLFUL ATTEMPT TO EVADE TAX.—In case of a willful attempt in any manner to defeat or evade tax imposed by this title (other than tax imposed by subtitle A or B), the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(3) NO RETURN.—In the case of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(4) EXTENSION BY AGREEMENT.—Where, before the expiration of the time prescribed in this section for the assessment of any tax imposed by this title, except the estate tax provided in chapter 11, both the Secretary and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(5) TAX RESULTING FROM CHANGES IN CERTAIN INCOME TAX OR ESTATE TAX CREDITS.—

> For special rules applicable in cases where the adjustment of certain taxes allowed as a credit against income taxes or estate taxes results in additional tax, see section 905(c) (relating to the foreign tax credit for income tax purposes) and section 2016 (relating to taxes of foreign countries, States, etc., claimed as credit against estate taxes).

[(6) TAX RESULTING FROM CERTAIN DISTRIBUTIONS OR FROM TERMINATION AS LIFE INSURANCE COMPANY.—In the case of any tax imposed under section 802(a) by reason of section 802(b)(3) on account of a termination of the taxpayer as an insurance company or as a life insurance company to which section 815(d)(2)(A) applies, or on account of a distribution by the taxpayer to which section 815(d)(2)(B) applies, such tax may be assessed within 3 years after the return was filed (whether or not such return was filed on or after the date prescribed) for the taxable year for which the taxpayer ceases to be an insurance company, the second taxable year for which the taxpayer is not a life insurance company, or the taxable year in which the distribution is actually made, as the case may be.]

[(7)] *(6)* TERMINATION OF PRIVATE FOUNDATION STATUS.—In the case of a tax on termination of private foundation status under section 507, such tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(8) SPECIAL RULE FOR CERTAIN AMENDED RETURNS.—Where, within the 60-day period ending on the day on which the time prescribed in this section for the assessment of any tax imposed by subtitle A for any taxable year would otherwise expire, the Secretary receives a written document signed by the taxpayer showing that the taxpayer owes an additional amount of such tax for such taxable year, the period for the assessment of such additional amount shall not expire before the day 60 days after the day on which the Secretary receives such statement.

* * * * * * *

[(k) REDUCTIONS OF POLICYHOLDERS SURPLUS ACCOUNT OF LIFE INSURANCE COMPANIES.—In the case of a deficiency attributable to the application to the taxpayer of section 815(d)(5) (relating to reductions of policyholders surplus account of life insurance companies for certain unused deductions), such deficiency may be assessed at any time before the expiration of the period within which a deficiency for the last taxable year to which the loss described in section 815(d)(5)(A) is carried under section 812(b)(2) may be assessed.]

(n) SPECIAL RULE FOR CHAPTER 42 AND SIMILAR TAXES.—

(1) IN GENERAL.—For purposes of any tax imposed by chapter 42 (other than section 4940) or by section 4975, the return referred to in this section shall be the return filed by the private foundation, plan, or trust (as the case may be) for the year in which the act (or failure to act) giving rise to liability for such tax occurred. For purposes of section 4940, such return is the return filed by the private foundation for the taxable year for which the tax is imposed.

(2) CERTAIN CONTRIBUTIONS TO SECTION 501(c)(3) ORGANIZATIONS.—In the case of a deficiency of tax of a private foundation making a contribution in the manner provided in section 4942(g)(3) (relating to certain contributions to section 501(c)(3) organizations) attributable to the failure of a section 501(c)(3) organization to make the distribution prescribed by section 4942(g)(3), such deficiency may be assessed at any time before the expiration of one year after the expiration of the period within which a deficiency may be assessed for the taxable year with respect to which the contribution was made.

(3) CERTAIN SET-ASIDES DESCRIBED IN SECTION 4942(g)(2).—In the case of a deficiency attributable to the failure of an amount set aside by a private foundation for a specific project to be treated as a qualifying distribution under the provisions of section [4942(g)(2)(B)(i)(II),] *4942(g)(2)(B)(ii),* such deficiency may be assessed at any time before the expiration of 2 years after the expiration of the period within which a deficiency

may be assessed for the taxable year to which the amount set aside relates.

* * * * * * *

[(p) DEFICIENCY ATTRIBUTABLE TO ELECTION UNDER SECTION 44B.—The period for assessing a deficiency attributable to any election under section 44B (or any revocation thereof) shall not expire before the date 1 year after the date on which the Secretary is notified of such election (or revocation).]

[(q)] *(p)* SPECIAL RULES FOR WINDFALL PROFIT TAX.—

(1) OIL SUBJECT TO WITHHOLDING.—

(A) IN GENERAL.—In the case of any oil to which section 4995(a) applies and with respect to which no return is required, the return referred to in this section shall be the return (of the person liable for the tax imposed by section 4986) of the taxes imposed by subtitle A for the taxable year in which the removal year ends.

(B) REMOVAL YEAR.—For purposes of subparagraph (A), the term "removal year" means the calendar year in which the oil is removed from the premises.

(2) EXTENSION OF LIABILITY ATTRIBUTABLE TO DOE RECLASSIFICATION.—

(A) IN GENERAL.—In the case of the tax imposed by chapter 45, if a Department of Energy change becomes final, the period for assessing any deficiency attributable to such change shall not expire before the date which is 1 year after the date on which such change becomes final.

(B) DEPARTMENT OF ENERGY CHANGE.—For purposes of subparagraph (A) and section 6511(h)(2), the term "Department of Energy change" means any change by the Department of Energy in the classification under the June 1979 energy regulations (as defined in section 4996b(8)(C)) of a property or of domestic crude oil from a property.

[(3) PARTNERSHIP ITEMS OF FEDERALLY REGISTERED PARTNERSHIPS.—Under regulations prescribed by the Secretary, rules similar to the rules of subsection (o) shall apply to the tax imposed by section 4986.]

"(3) CROSS REFERENCE.—

For extension of period for windfall profit tax items of partnerships, see section 6229 as made applicable by section 6232.

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Subchapter B—Limitations on Credit or Refund

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SEC. 6511. LIMITATIONS ON CREDIT OR REFUND.

(a) PERIOD OF LIMITATION ON FILING CLAIM.—* * *.

* * * * * * *

(d) SPECIAL RULES APPLICABLE TO INCOME TAXES.—

(1) SEVEN-YEAR PERIOD OF LIMITATION WITH RESPECT TO BAD DEBTS AND WORTHLESS SECURITIES.—* * *.

* * * * * * *

(4) SPECIAL PERIOD OF LIMITATION WITH RESPECT TO CERTAIN CREDIT CARRYBACKS.—

(A) PERIOD OF LIMITATION.—If the claim for credit or refund relates to an overpayment attributable to a credit carryback in lieu of the 3-year period of limitation prescribed in subsection (a), the period shall be that period which ends 3 years after the time prescribed by law for filing the return (including extensions thereof) for the taxable year of the unused credit which results in such carryback (or, with respect to any portion of a credit carryback from a taxable year attributable to a net operating loss carryback, capital loss carryback, or other credit carryback from a subsequent taxable year, the period shall be that period which ends 3 years after the time presecribed by law for filing the return, including extensions thereof, for such subsequent taxable year) or the period prescribed in subsection (c) in respect of such taxable year, whichever expires later. In the case of such a claim, the amount of the credit or refund may exceed the portion of the tax paid within the period provided in subsection (b)(2) or (c), whichever is applicable, to the extent of the amount of the overpayment attributable to such carryback.

(B) APPLICABLE RULES.—If the allowance of a credit or refund of an overpayment of tax attributable to a credit carryback is otherwise prevented by the operation of any law or rule of law other than section 7122, relating to compromises, such credit or refund may be allowed or made, if claim therefor is filed within the period provided in subparapraph (A) of this paragraph. In the case of any such claim for credit or refund, the determination by any court, including the Tax Court, in any proceeding in which the decision of the court has become final, shall not be conclusive with respect to any credit, and the effect of such credit, to the extent that such credit is affected by a credit carryback which was not in issue in such proceeding.

[(C) CREDIT CARRYBACK DEFINED.—For purposes of this paragraph, the term "credit carryback" means any investment credit carryback, work incentive program credit carryback, new employee credit carryback, research credit carryback, and employee stock ownership credit carryback.]

(C) CREDIT CARRYBACK DEFINED.—For purposes of this paragraph, the term "credit carryback" means any business carryback under section 39 and any research credit carryback under section 30(g)(2).

(5) SPECIAL PERIOD OF LIMITATION WITH RESPECT TO SELF-EMPLOYMENT TAX IN CERTAIN CASES.—If the claim for credit or refund relates to an overpayment of the tax imposed by chapter 2 (relating to the tax on self-employment income) attributable to an agreement, or modification of an agreement, made

pursuant to section 218 of the Social Security Act (relating to coverage of State and local employees), and if the allowance of a credit or refund of such overpayment is otherwise prevented by the operation of any law or rule of law other than section 7122 (relating to compromises), such credit or refund may be allowed or made if claim therefor is file on or before the last day of the second year after the calendar year in which such agreement (or modification) is agreed to by the State and the Secretary of Health, Education, and Welfare.

[(6) SPECIAL PERIOD OF LIMITATION WITH RESPECT TO REDUCTION OF POLICYHOLDERS SURPLUS ACCOUNT OF LIFE INSURANCE COMPANIES.—

[(A) PERIOD OF LIMITATIONS.—if the claim for credit or refund relates to an overpayment arising by operation of section 815(d)(5) (relating to reduction of policyholders surplus account of life insurance companies for certain unused deductions), in lieu of the 3-year period of limitation prescribed in subsection (a), the period shall be that period which ends with the expiration of the 15th day of the 39th month following the end of the last taxable year to which the loss described in section 815(d)(5)(A) is carried under section 812(b)(2), or the period prescribed in subsection (c), in respect of such taxable year, whichever expires later. In the case of such a claim, the amount of the credit or refund may exceed the portion of the tax paid within the period provided in subsection (b)(2) or (c), whichever is applicable, to the extent of the amount of overpayment arising by operation of section 815(d)(5).

[(B) APPLICABLE RULES.—If the allowance of a credit or refund of an overpayment arising by operation of section 815(d)(5) is otherwise prevented by operation of any law or rule of law, other than section 7122 (relating to compromises), such credit or refund may be allowed or made, if claim therefor is filed within the period provided in subparagraph (A) of this paragraph. In the case of any such claim for credit or refund, the determination by any court, including the Tax Court, in any proceeding in which the decision of the court has become final, shall be conclusive except with respect to the effect of the operation of section 815(d)(5), to the extent such effect of the operation of section 815(d)(5) was not in issue in such proceeding.]

[7] *(6)* SPECIAL PERIOD OF LIMITATION WITH RESPECT TO AMOUNTS INCLUDED IN INCOME SUBSEQUENTLY RECAPTURED UNDER QUALIFIED PLAN TERMINATION.—If the claim for credit or refund relates to an overpayment of tax imposed by subtitle A on account of the recapture, under section 4045 of the Employee Retirement Income Security Act of 1974, of amounts included in income for a prior taxable year, the 3-year period of limitation prescribed in subsection (a) shall be extended, for purposes of permitting a credit or refund of the amount of the recapture, until the

date which occurs one year after the date on which such recaptured amount is paid by the taxpayer.

* * * * * * *

(h) Special Rules for Windfall Profit Taxes.—

(1) Oil subject to withholding.—In the case of any oil to which section 4995(a) applies and with respect to which no return is required, the return referred to in subsection (a) shall be the return (of the person liable for the tax imposed by section 4986) of the taxes imposed by subtitle A for the taxable year in which the removal year (as defined in section 6501(q)(1)(B)) ends.

(2) Special rule for DOE reclassification.—In the case of any tax imposed by chapter 45, if a Department of Energy change (as defined in section 6501(q)(2)(B) becomes final, the period for filing a claim for credit or refund for any overpayment attributable to such change shall not expire before the date which is 1 year after the date on which such change becomes final.

[(3) Partnership items of federally registered partnerships.—Under regulations prescribed by the Secretary, rules similar to the rules of subsection (g) shall apply to the tax imposed by section 4986.]

(3) Cross reference.—

For period of limitation for windfall profit tax items of partnerships, see section 6227(a) and subsections (c) and (d) of section 6230 as made applicable by section 6232.

[(i) Special Rule for Certain Tread Rubber Tax Credits or Refunds.—The period for allowing a credit or making a refund of any overpayment of tax arising by reason of subparagraph (G)(iii) of section 6416(b)(2) with respect to any adjustment of sales price of a tire pursuant to a warranty or guarantee shall not expire if claim therefor is filed before the date which is one year after the day on which such adjustment is made.]

[(j)] *(i)* Cross References.—

(1) For time return deemed filed and tax considered paid, see section 6513.

(2) For limitations with respect to certain credits against estate tax, see sections 2011(c), 2014(b), and 2015.

(3) For limitations in case of floor stocks refunds, see section 6412.

(4) For a period of limitations for credit or refund in the case of joint income returns after separate returns have been filed, see section 6013(b)(3).

(5) For limitations in case of payments under section 6420 (relating to gasoline used on farms), see section 6420(b).

(6) For limitations in case of payments under section 6421 (relating to gasoline used for certain nonhighway purposes or by local transit systems), see section 6421(c).

(7) For a period of limitations for refund of an overpayment of penalties imposed under section 6694 or 6695, see section 6696(d)(2).

CHAPTER 67—INTEREST

* * * * * * *

Subchapter A—Interest on Underpayments

* * * * * * *

SEC. 6601. INTEREST ON UNDERPAYMENT, NONPAYMENT, OR EXTENSIONS OF TIME FOR PAYMENT, OF TAX.

(a) GENERAL RULE.—If any amount of tax imposed by this title (whether required to be shown on a return, or to be paid by stamp or by some other method) is not paid on or before the last date prescribed for payment, interest on such amount at an annual rate established under section 6621 shall be paid for the period from such last date to the date paid.

* * * * * * *

(d) INCOME TAX REDUCED BY CARRYBACK OR ADJUSTMENT FOR CERTAIN UNUSED DEDUCTIONS.—

(1) NET OPERATING LOSS OR CAPITAL LOSS CARRYBACK.—If the amount of any tax imposed by subtitle A is reduced by reason of a carryback of a net operating loss or net capital loss, such reduction in tax shall not affect the computation of interest under this section for the period ending with the filing date for the taxable year in which the net operating loss or net capital loss arises.

(2) CERTAIN CREDIT CARRYBACKS.—

(A) IN GENERAL.—If any credit allowed for any taxable year is increased by reason of a credit carryback, such increase shall not affect the computation of interest under this section for the period ending with the filing date for the taxable year in which the credit carryback arises, or, with respect to any portion of a credit carryback from a taxable year attributable to a net operating loss carryback, capital loss carryback, or other credit carryback from a subsequent taxable year, such increase shall not affect the computation of interest under this section for the period ending with the filing date for such subsequent taxable year.

(B) CREDIT CARRYBACK DEFINED.—For purposes of this paragraph, the term "credit carryback" has the meaning given such term by section 6511(d)(4)(C).

[(3) ADJUSTMENT FOR CERTAIN UNUSED DEDUCTIONS OF LIFE INSURANCE COMPANIES.—If the amount of any tax imposed by subtitle A is reduced by operation of section 815(d)(5) (relating to reduction of policyholders surplus account of life insurance companies for certain unused deductions), such reduction in tax shall not affect the computation of interest under this section for the period ending with the last day of the last taxable year to which the loss described in section 815(d)(5)(A) is carried under section 812(b)(2).]

[(4)] *(3)* Filing date.—For purposes of this subsection, the term "filing date" has the meaning given to such term by section 6611(f)(3)(A).

* * * * * * *

[(h) Exception as to Estimated Tax.—This section shall not apply to any failure to pay estimated tax required by section 6153 or section 6154.]

(h) Exception as to Estimated Tax.—This section shall not apply to any failure to pay any estimated tax required by section 6154 or 6654.

* * * * * * *

Subchapter B—Interest on Overpayments

Sec. 6611. Interest on overpayments.
Sec. 6612. Cross references.

SEC. 6611. INTEREST ON OVERPAYMENTS.

(a) Rate.—* * *

* * * * * * *

(f) Refund of Income Tax Caused by Carryback or Adjustment for Certain Unused Deductions.—

(1) Net operating loss or capital loss carryback.—For purposes of subsection (a), if any overpayment of tax imposed by subtitle A results from a carryback of a net operating loss or net capital loss, such overpayment shall be deemed not to have been made prior to the filing date for the taxable year in which such net operating loss or net capital loss arises.

(2) Certain credit carrybacks.—

(A) In general.—For purposes of subsection (a), if any overpayment of tax imposed by subtitle A results from a credit carryback, such overpayment shall be deemed not to have been made before the filing date for the taxable year in which such credit carryback arises, or, with respect to any portion of a credit carryback from a taxable year attributable to a net operating loss carryback, capital loss carryback, or other credit carryback from a subsequent taxable year, such overpayment shall be deemed not to have been made before the filing date for such subsequent taxable year.

(B) Credit carryback defined.—For purposes of this paragraph, the term "credit carryback" has the meaning given such term by section 6511(d)(4)(C).

(3) Special rules for paragraphs (1) and (2).—

(A) Filing date.—For purposes of this subsection, the term "filing date" means the last date prescribed for filing the return of tax imposed by subtitle A for the taxable year (determined without regard to extensions).

(B) Coordination with subsection (e).—

(i) In general.—For purposes of subsection (e)—

(I) any overpayment described in paragraph (1) or (2) shall be treated as an overpayment for the loss year, and

(II) such subsection shall be applied with respect to such overpayment by treating the return for the loss year as not filed before claim for such overpayment is filed.

(ii) LOSS YEAR.—For purposes of this subparagraph, the term "loss year" means—

(I) in the case of a carryback of a net operating loss or net capital loss, the taxable year in which such loss arises, and

(II) in the case of a credit carryback, the taxable year in which such credit carryback arises (or, with respect to any portion of a credit carryback from a taxable year attributable to a net operating loss carryback, a capital loss carryback, or other credit carryback from a subsequent taxable year, such subsequent taxable year).

[(4) ADJUSTMENT FOR CERTAIN UNUSED DEDUCTIONS OF LIFE INSURANCE COMPANIES.—For purposes of subsection (a), if any overpayment of tax imposed by subtitle A arises by operation of section 815(d)(5) (relating to reduction of policyholders surplus account of life insurance companies for certain unused deductions), such overpayment shall be deemed not to have been made prior to the close of the last taxable year to which the loss described in section 815(d)(5)(A) is carried under section 812(b)(2).]

CHAPTER 68—ADDITIONS TO THE TAX, ADDITIONAL AMOUNTS, AND ASSESSABLE PENALTIES

* * * * * * *

Subchapter A—Additions to the Tax and Additional Amounts

* * * * * * *

SEC. 6651. FAILURE TO FILE TAX RETURN OR TO PAY TAX.

(a) ADDITION TO THE TAX.—In case of failure—

(1) to file any return required under authority of subchapter A of chapter 61 (other than part III thereof), subchapter A of chapter 51 (relating to distilled spirits, wines, and beer), or of subchapter A of chapter 52 (relating to tobacco, cigars, cigarettes, and cigarette papers and tubes), or of subchapter A of chapter 53 (relating to machine guns and certain other firearms), on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return 5 percent of the amount of such tax if

the failure is for not more than 1 month, with an additional 5 percent for each additional month or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate;

(2) to pay the amount shown as tax on any return specified in paragraph (1) on or before the date prescribed for payment of such tax (determined with regard to any extension of time for payment), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount shown as tax on such return 0.5 percent of the amount of such tax if the failure is for not more than 1 month, with an additional 0.5 percent for each additional month or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate; or

(3) to pay any amount in respect of any tax required to be shown on a return specfified in paragraph (1) which is not so shown (including an assessment made pursuant to section 6213(b)) within 10 days of the date of the notice and demand therefor, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount of tax stated in such notice and demand 0.5 percent of the amount of such tax if the failure is for not more than 1 month, with an additional 0.5 percent for each additional month or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate.

In the case of a failure to file a return of tax imposed by chapter 1 within 60 days of the date prescribed for filing of such return (determined with regard to any extensions of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, the addition to tax under paragraph (1) shall not be less than the lesser of $100 or 100 percent of the amount required to be shown as tax on such return.

(b) PENALTY IMPOSED ON NET AMOUNT DUE.—For purposes of—

(1) subsection (a)(1), the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed on the return,

(2) subsection (a)(2), the amount of tax shown on the return shall, for purposes of computing the addition for any month, be reduced by the amount of any part of the tax which is paid on or before the beginning of such month and by the amount of any credit against the tax which may be claimed on the return, and

(3) subsection (a)(3), the amount of tax stated in the notice and demand shall, for the purpose of computing the addition for any month, be reduced by the amount of any part of the tax which is paid before the beginning of such month.

(c) LIMITATIONS AND SPECIAL RULE.—

(1) Additions under more than one paragraph.—

(A) With respect to any return, the amount of the addition under paragraph (1) of subsection (a) shall be reduced by the amount of the addition under paragraph (2) of subsection (a) for any month to which an addition to tax applies under both paragraphs (1) and (2). In any case described in the last sentence of subsection (a), the amount of the addition under paragraph (1) of subsection (a) shall not be reduced under the preceding sentence below the amount provided in such last sentence.

(B) With respect to any return, the maximum amount of the addition permitted under paragraph (3) of subsection (a) shall be reduced by the amount of the addition under paragraph (1) of subsection (a) (determined without regard to the last sentence of such subsection) which is attributable to the tax for which the notice and demand is made and which is not paid within 10 days of notice and demand.

(2) AMOUNT OF TAX SHOWN MORE THAN AMOUNT REQUIRED TO BE SHOWN.—If the amount required to be shown as tax on a return is less than the amount shown as tax on such return, subsections (a)(2) and (b)(2) shall be applied by substituting such lower amount.

[(d) EXCEPTION FOR DECLARATIONS OF ESTIMATED TAX.—This section shall not apply to any failure to file a declaration of estimated tax required by section 6015 or to pay any estimated tax required to be paid by section 6153 or 6154.]

(d) EXCEPTION FOR ESTIMATED TAX.—This section shall not apply to any failure to pay any estimated tax required to be paid by section 6154 or 6654.

SEC. 6652. FAILURE TO FILE CERTAIN INFORMATION RETURNS, REGISTRATION STATEMENTS, ETC.

(a) RETURNS RELATING TO INFORMATION AT SOURCE, PAYMENTS OF DIVIDENDS, ETC., AND CERTAIN TRANSFERS OF STOCK.—

* * * * * * *

(f) INFORMATION REQUIRED IN CONNECTION WITH CERTAIN PLANS OF DEFERRED COMPENSATION.—In the case of failure to file a return or statement required under section 6058 (relating to information required in connection with certain plans of deferred compensation) or 6047 (relating to information relating to certain trusts and annuity [and bond purchase] plans) on the date and in the manner prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause, there shall be paid (on notice and demand by the Secretary and in the same manner as tax) by the person failing so to file, $25 for each day during which such failure continues, but the total amount imposed under this subsection on any person for failure to file any return shall not exceed $15,000.

* * * * * * *

(i) FAILURE TO GIVE NOTICE TO RECIPIENTS OF CERTAIN PENSION, ETC., DISTRIBUTIONS.—In the case of each failure to provide notice as required by section 3405(d)(10)(B), at the time prescribed therefor, unless it is shown that such failure is due to reasonable cause and not to willful neglect, there shall be paid, on notice and demand of the Secretary and in the same manner as tax, by the person failing to provide such notice, an amount equal to $10 for each such fail-

ure, but the total amount imposed on such person for all such failures during any calendar year shall not exceed $5,000.

[(i)] *(j)* ALCOHOL AND TOBACCO TAXES.—

For penalties for failure to file certain information returns with respect to alcohol and tobacco taxes, see, generally, subtitle E.

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[SEC. 6654. FAILURE BY INDIVIDUAL TO PAY ESTIMATED INCOME TAX.

[(a) ADDITION TO THE TAX.—In the case of any underpayment of estimated tax by an individual, except as provided in subsection (d), there shall be added to the tax under chapter 1 and the tax under chapter 2 for the taxable year an amount determined at an annual rate established under section 6621 upon the amount of the underpayment (determined under subsection (b)) for the period of the underpayment (determined under subsection (c)).

[(b) AMOUNT OF UNDERPAYMENT.—For purposes of subsection (a), the amount of the underpayment shall be the excess of—

[(1) The amount of the installment which would be required to be paid if the estimated tax were equal to 80 percent (66⅔ percent in the case of individuals referred to in section 6073(b), relating to income from farming or fishing) of the tax shown on the return for the taxable year or, if no return was filed, 80 percent (66⅔ percent in the case of individuals referred to in section 6073(b), relating to income from farming or fishing) of the tax for such year, over

[(2) The amount, if any, of the installment paid on or before the last date prescribed for such payment.

[(c) PERIOD OF UNDERPAYMENT.—The period of the underpayment shall run from the date the installment was required to be paid to whichever of the following dates is the earlier—

[(1) The 15th day of the fourth month following the close of the taxable year.

[(2) With respect to any portion of the underpayment, the date on which such portion is paid. For purposes of this paragraph, a payment of estimated tax on any installment date shall be considered a payment of any previous underpayment only to the extent such payment exceeds the amount of the installment determined under subsection (b)(1) for such installment date.

[(d) EXCEPTION.—Notwithstanding the provisions of the preceding subsections, the addition to the tax with respect to any underpayment of any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment equals or exceeds the amount on which would have been required to be paid on or before such date if the estimated tax were whichever of the following is the least—

[(1) The tax shown on the return of the individual for the preceding taxable year, if a return showing a liability for tax was filed by the individual for the preceding taxable year and such preceding year was a taxable year of 12 months.

[(2) An amount equal to 80 percent (66⅔ percent in the case of individuals referred to in section 6073(b), relating to income from farming or fishing) of the tax for the taxable year computed by placing on an annualized basis the taxable income for the months in the taxable year ending before the month in which the installment is required to be paid and by taking into account the adjusted self-employment income (if the net earnings from self-employment (as defined in section 1402(a)) for the taxable year equal or exceed $400). For purposes of this paragraph—

[(A) The taxable income shall be placed on an annualized basis under regulations prescribed by the Secretary.

[(B) The term "adjusted self-employment means—

[(i) the net earnings from self-employment (as defined in section 1402(a)) for the months in the taxable year ending before the month in which the installment is required to be paid, but not more than

[(ii) the excess of (I) an amount equal to the contribution and benefit base (as determined under section 230 of the Social Security Act) which is effective for the calendar year in which the taxable year begins, over (II) the amount determined by placing the wages (within the meaning of section 1402(b)) for the months in the taxable year ending before the month in which the installment is required to be paid on an annualized basis in a manner consistent with clauses (i) and (ii) of subparagraph (A).

[(3) An amount equal to 90 percent of the tax computed, at the rates applicable to the taxable year, on the basis of the actual taxable income and the actual self-employment income for the months in the taxable year ending befor the month in which the installment is required to be paid as if such months constituted the taxable year.

[(4) An amount equal to the tax computed, at the rates applicable to the taxable year, on the basis of the taxpayer's status with respect to personal exemptions under section 151 for the taxable year, but otherwise on the basis of the facts shown on his return for, and the law applicable to, the preceding taxable year.

[(e) APPLICATION OF SECTION IN CASE OF TAX WITHHELD ON WAGES.—For purposes of applying this section—

[(1) The estimated tax shall be computed without any reduction for the amount which the individual estimates as his credit under section 31 (relating to tax withheld at source on wages, interest, dividends, and patronage dividends), and

[(2) The amount of the credit allowed under section 31 for the taxable year shall be deemed a payment of estimated tax, and an equal part of such amount shall be deemed paid on each installment date (determined under section 6153) for such taxable year, unless the taxpayer establishes the dates on which all amounts were actually withheld, in which case the amounts so withheld shall be deemed payments of estimated tax on the dates on which such amounts were actually withheld.

[(f) EXCEPTION WHERE TAX IS SMALL AMOUNT.—

[(1) IN GENERAL.—No addition to tax shall be imposed under subsection (a) for any taxable year if the tax shown on the return for such taxable year (or, if no return is filed, the tax), reduced by the credit allowable under section 31, is less than the amount determined under the following table:

In the case of taxable years beginning in:	**The amount is:**
1981	$100
1982	200
1983	300
1984	400
1985 and thereafter	500

[(2) SPECIAL RULE.—For purposes of subsection (b), the amount of any installment required to be paid shall be determined without regard to subsection (b) of section 6015.

[(g) TAX COMPUTED AFTER APPLICATION OF CREDITS AGAINST TAX.—For purposes of subsections (b), (d), (f), and (h) the term "tax" means—

[(1) the tax imposed by this chapter 1 (other than by section 55), plus

[(2) the tax imposed by chapter 2, minus

[(3) the sum of—

[(A) the credits against tax allowed by part IV of subchapter A of chapter 1, other than the credit against tax provided by section 31 (relating to tax withheld on wages, interest, dividends, and patronage dividends), plus

[(B) to the extent allowed under regulations prescribed by the Secretary, any amount which is treated under section 6429 or 6430 as an overpayment of the tax imposed by section 4986.

[(B) to the extent allowed under regulations prescribed by the Secretary, any overpayment of the tax imposed by section 4986 (determined without regard to section 4995(a)(4)(B)).

[(h) EXCEPTION WHERE NO TAX LIABILITY FOR PRECEDING TAXABLE YEAR—No addition to tax shall be imposed under subsection (a) for any taxable year if—

[(1) the individual did not have any liability for tax for the preceding taxable year,

[(2) the preceding taxable year was a taxable year of 12 months, and

[(3) the individual was a citizen or resident of the United States throughout the preceding taxable year.

[(i) SHORT TAXABLE YEAR.—The application of this section to taxable years of less than 12 months shall be in accordance with regulations prescribed by the Secretary.]

SEC. 6654. FAILURE BY INDIVIDUAL TO PAY ESTIMATED INCOME TAX.

(a) ADDITION TO THE TAX.—Except as otherwise provided in this section, in the case of any underpayment of estimated tax by an individual, there shall be added to the tax under chapter 1 and the tax under chapter 2 for the taxable year an amount determined by applying—

(1) the applicable annual rate established under section 6621,

(2) to the amount of the underpayment,

(3) for the period of the underpayment.

(b) AMOUNT OF UNDERPAYMENT; PERIOD OF UNDERPAYMENT.—For purposes of subsection (a)—

(1) AMOUNT.—The amount of the underpayment shall be the excess of—

(A) the required installment, over

(B) the amount (if any) of the installment paid on or before the due date for the installment.

(2) PERIOD OF UNDERPAYMENT.—The period of the underpayment shall run from the due date for the installment to whichever of the following dates is the earlier—

(A) the 15th day of the 4th month following the close of the taxable year, or

(B) with respect to any portion of the underpayment, the date on which such portion is paid.

(3) ORDER OF CREDITING PAYMENTS.—For purposes of paragraph (2)(B), a payment of estimated tax shall be credited against unpaid required installments in the order in which such installments are required to be paid.

(c) NUMBER OF REQUIRED INSTALLMENTS; DUE DATES.—For purposes of this section—

(1) PAYABLE IN 4 INSTALLMENTS.—There shall be 4 required installments for each taxable year.

(2) TIME FOR PAYMENT OF INSTALLMENTS.—

In the case of the following required installments:	**The due date is:**
1st	April 15
2nd	June 15
3rd	September 15
4th	January 15 of the following taxable year.

(d) AMOUNT OF REQUIRED INSTALLMENTS.—For purposes of this section—

(1) AMOUNT.—

(A) IN GENERAL.—Except as provided in paragraph (2), the amount of any required installment shall be 25 percent of the required annual payment.

(B) REQUIRED ANNUAL PAYMENT.—For purposes of subparagraph (A), the term "required annual payment" means the lesser of—

(i) 80 percent of the tax shown on the return for the taxable year (or, if no return is filed, 80 percent of the tax for such year), or

(ii) 100 percent of the tax shown on the return of the individual for the preceding taxable year.

Clause (ii) shall not apply if the preceding taxable year was not a taxable year of 12 months or if the individual did not file a return for such preceding taxable year.

(2) LOWER REQUIRED INSTALLMENT WHERE ANNUALIZED INCOME INSTALLMENT IS LESS THAN AMOUNT DETERMINED UNDER PARAGRAPH (1)(A).—

(A) IN GENERAL.—In the case of any required installment, if the individual establishes that the annualized income installment is less than the amount determined under paragraph (1)(A)—

(i) the amount of such required installment shall be the annualized income installment, and

(ii) any reduction in a required installment resulting from the application of this subparagraph shall be recaptured by increasing the amount of the next required installment determined under paragraph (1)(A) by the amount of such reduction (and by increasing subsequent required installments to the extent that the reduction has not previously been recaptured under this clause).

(B) DETERMINATION OF ANNUALIZED INCOME INSTALLMENT.—In the case of any required installment, the annualized income installment is the excess (if any) of—

(i) an amount equal to the applicable percentage of the tax for the taxable year computed by placing on an annualized basis the taxable income, alternative minimum taxable income, and adjusted self-employment income for months in the taxable year ending before the due date for the installment, over

(ii) the aggregate amount of any prior required installments for the taxable year.

(C) SPECIAL RULES.—For purposes of this paragraph—

(i) ANNUALIZATION.—The taxable income, alternative minimum taxable income, and adjusted self-employment income shall be placed on an annualized basis under regulations prescribed by the Secretary.

(ii) APPLICABLE PERCENTAGE.—

In the case of the following required installments:	*The applicable percentage is:*
1st	*20*
2nd	*40*
3rd	*60*
4th	*80*

(iii) ADJUSTED SELF-EMPLOYMENT INCOME.—The term "adjusted self-employment income" means self-employment income (as defined in section 1402(b)); except that section 1402(b) shall be applied by placing wages (within the meaning of section 1402(b)) for months in the taxable year ending before the due date for the installment on an annualized basis consistent with clause (i).

(e) EXCEPTIONS.—

(1) WHERE TAX IS SMALL AMOUNT.—No addition to tax shall be imposed under subsection (a) for any taxable year if the tax shown on the return for such taxable year (or, if no return is filed, the tax), reduced by the credit allowable under section 31, is less than $500 ($400 in the case of taxable years beginning during 1984).

(2) WHERE NO TAX LIABILITY FOR PRECEDING TAXABLE YEAR.—No addition to tax shall be imposed under subsection (a) for any taxable year if—

(A) the preceding taxable year was a taxable year of 12 months,

(B) the individual did not have any liability for tax for the preceding taxable year, and

(C) the individual was a citizen or resident of the United States throughout the preceding taxable year.

(3) Waiver in certain cases.—No addition to tax shall be imposed under subsection (a) with respect to any underpayment to the extent the Secretary determines that by reason of casualty, disaster, or other unusual circumstances the imposition of such addition to tax would be against equity and good conscience.

(f) Tax Computer After Application of Credits Against Tax.—For purposes of this section, the term "tax" means—

(1) the tax imposed by chapter 1, plus

(2) the tax imposed by chapter 2, minus

(3) the sum of—

(A) the credits against tax allowed by part IV of subchapter A of chapter 1, other than the credit against tax provided by section 31 (relating to tax withheld on wages), plus

(B) to the extent allowed under regulations prescribed by the Secretary, any overpayment of the tax imposed by section 4986 (determined without regard to section 4995(a)(4)(B)).

(g) Application of Section in Case of Tax Withheld on Wages.—

(1) In general.—For purposes of applying this section, the amount of the credit allowed under section 31 for the taxable year shall be deemed a payment of estimated tax, and an equal part of such amount shall be deemed paid on each due date for such taxable year, unless the taxpayer establishes the dates on which all amounts were actually withheld, in which case the amounts so withheld shall be deemed payments of estimated tax on the dates on which such amounts were actually withheld.

(2) Separate application.—The taxpayer may apply paragraph (1) separately with respect to—

(A) wage withholding, and

(B) all other amounts withheld for which credit is allowed under section 31.

(h) Special Rule Where Return Filed on or Before January 31.—If, on or before January 31 of the following taxable year, the taxpayer files a return for the taxable year and pays in full the amount computed on the return as payable, then no addition to tax shall be imposed under subsection (a) with respect to any underpayment of the 4th required installment for the taxable year.

(i) Special Rules for Farmers and Fishermen.—For purposes of this section—

(1) In general.—If an individual is a farmer or fisherman for any taxable year—

(A) there shall be only 1 required installment for the taxable year,

(B) the due date for such installment shall be January 15 of the following taxable year,

(C) the amount of such installment shall be equal to the required annual payment (determined under subsection (d)(1)(B) by substituting "66⅔ percent" for "80 percent", and

(D) subsection (h) shall be applied—

(i) by substituting "March 1" for "January 31", and

(ii) by treating the required installment described in subparagraph (A) of this paragraph as the 4th required installment.

(2) FARMER OR FISHERMAN DEFINED.—An individual is a farmer or fisherman for any taxable year if—

(A) the individual's gross income from farming or fishing (including oyster farming) for the taxable year is at least 66⅔ percent of the total gross income from all sources for the taxable year, or

(B) such individual's gross income from farming or fishing (including oyster farming) shown on the return of the individual for the preceding taxable year is at least 66⅔ percent of the total gross income from all sources shown on such return.

(j) FISCAL YEARS AND SHORT YEARS.—

(1) FISCAL YEARS.—In applying this section to a taxable year beginning on any date other than January 1, there shall be substituted, for the months specified in this section, the months which correspond thereto.

(2) SHORT TAXABLE YEAR.—This section shall be applied to taxable years of less than 12 months in accordance with regulations prescribed by the Secretary.

(k) ESTATES AND TRUSTS.—This section shall not apply to any estate or trust.

(l) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section.

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SEC. 6659. ADDITION TO TAX IN THE CASE OF VALUATION OVERSTATEMENTS FOR PURPOSES OF THE INCOME TAX.

(a) ADDITION TO THE TAX. —If—

(1) an individual, or

(2) a closely held corporation or a personal service corporation,

has an underpayment of the tax imposed by chapter 1 for the taxable year which is attributable to a valuation overstatement, then there shall be added to the tax an amount equal to the applicable percentage of the underpayment so attributable.

(b) APPLICABLE PERCENTAGE DEFINED.—For purposes of subsection (a), the applicable percentage shall be determined under the following table:

If the valuation claimed is the following percent of the correct valuation—	The applicable percentage is:
150 percent or more but not more than 200 percent	10
More than 200 percent but not more than 250 percent	20
More than 250 percent	30

(c) VALUATION OVERSTATEMENT DEFINED.—

(1) In General.—For purposes of this section, there is a valuation overstatement if the value of any property, or the adjusted basis of any property, claimed on any return is 150 percent or more of the amount determined to be the correct amount of such valuation or adjusted basis (as the case may be).

(2) Property must have been acquired within last 5 years.—This section shall not apply to any property which, as of the close of the taxable year for which there is a valuation overstatement, has been held by the taxpayer for more than 5 years.

(d) Underpayment Must Be at Least $1,000.—This section shall not apply if the underpayment for the taxable year attributable to valuation overstatements is less than $1,000.

(e) Authority To Waive.—The Secretary may waive all or any part of the addition to the tax provided by this section on a showing by the taxpayer that there was a reasonable basis for the valuation or adjusted basis claimed on the return and that such claim was made in good faith.

(f) Other Definitions.—For purposes of this section—

(1) Underpayment.—The term "underpayment" has the meaning given to such term by section 6653(c)(1).

(2) Clsely held corporation.—The term "closely held corporation" means any corporation described in section [456(a)(1)(C)] *465(a)(1)(B).*

(3) Personal service corporation.—The term "personal service corporation" means any corporation which is a service organization (within the meaning of section 414(m)(3)).

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Subchapter B—Assessable Penalties

Sec. 6671. Rules for application of assessable penalties.
Sec. 6672. Failure to collect and pay over tax, or attempt to evade or defeat tax.
Sec. 6673. Damages assessable for instituting proceedings before the Tax Court primarily for delay, etc.
Sec. 6674. Fraudulent statement or failure to furnish statement to employee.
Sec. 6675. Excessive claims with respect to the use of certain fuels.
Sec. 6676. Failure to supply identifying numbers.
Sec. 6677. Failure to file information returns with respect to certain foreign trusts.
Sec. 6678. Failure to furnish certain statements.
Sec. 6679. Failure to file returns, etc., with respect to foreign corporations or foreign partnerships.
Sec. 6682. False information with respect to withholding.
Sec. 6683. Failure of foreign corporation to file return or personal holding company tax.
Sec. 6684. Assessable penalties with respect to liability for tax under chapter 42.
Sec. 6685. Assessable penalties with respect to private foundation annual returns.
Sec. 6686. Failure of DISC to file returns.
Sec. 6687. Failure to supply information with respect to place of residence.
Sec. 6688. Assessable penalties with respect to information required to be furnished under section 7654.
Sec. 6689. Failure to file notice of redetermination of foreign tax.
Sec. 6690. Fraudulent statement or failure to furnish statement to plan participant.
Sec. 6692. Failure to file actuarial report.
Sec. 6693. Failure to provide reports on individual retirement accounts or annuities.

Sec. 6694. Understatement of taxpayer's liability by income tax return preparer.
Sec. 6695. Other assessable penalties with respect to the preparation of income tax returns for other persons.
Sec. 6696. Rules applicable with respect to section 6694 and 6695.
Sec. 6697. Assessable penalties with respect to liability for tax of real estate investment trusts.
Sec. 6698. Failure to file partnership return.
Sec. 6698A. Failure to file information with respect to carryover basis property.
Sec. 6699. Assessable penalties relating to tax credit employee stock ownership plan.
Sec. 6700. Promoting abusive tax shelters, etc.
Sec. 6701. Penalties for aiding and abetting understatement of tax liability.
Sec. 6702. Frivolous income tax return.
Sec. 6703. Rules applicable to penalties under section 6700, 6701, and 6702.
Sec. 6704. Failure to keep records necessary to meet reporting requirements under section 6047(e).
[Sec. 6705. Failure by broker to provide notice to payors.]
Sec. 6705. Failure to file reports on loans covered by mortgage credit certificates.

SEC. 6676. FAILURE TO SUPPLY IDENTIFYING NUMBERS.

(a) Civil Penalties.—

(1) In general.—If any person who is required by regulations prescribed under section 6109—

(A) to include his taxpayer identification number in any return, statement, or other document,

(B) to furnish his taxpayer identification number to another person, or

(C) to include in any return, statement, or other document made with respect to another person the taxpayer identification number of such other person,

fails to comply with such requirement at the time prescribed by such regulations, such person shall, unless it is shown that such failure is due to reasonable cause and not to willful neglect, pay a penalty of $5 for each such failure described in subparagraph (A) and $50 for each such failure described in subparagraph (B) or (C), except that the total amount imposed on such person for all such failures during any calendar year shall not exceed $50,000.

(2) Taxpayer identification number defined.—The term "taxpayer identification number" means the identifying number assigned to a person under section 6109.

(b) Penalty for Failure To Supply Identifying Number Under Section 215.—If any person who is required by regulations prescribed under section 215—

(1) to furnish his taxpayer identification number to another person, or

(2) to include on his return the taxpayer identification number of another person,

fails to comply with such requirement at the time prescribed by such regulations, such person shall, unless it is shown that such failure is due to reasonable cause and not to willful neglect, pay a penalty of $50 for each such failure.

[(b)] *(c)* Deficiency Procedures Not To Apply.—Subchapter B of chapter 63 (relating to deficiency procedures for income, estate, gift and certain excise taxes) shall not apply in respect of the assessment or collection of any penalty imposed by subsection (a) *or (b).*

* * * * * * *

SEC. 6699. ASSESSABLE PENALTIES RELATING TO TAX CREDIT EMPLOYEE STOCK OWNERSHIP PLAN.

(a) In General.—If a taxpayer who has claimed an employee plan credit or a credit allowable under section 44G (relating to the employee stock ownership credit) for any taxable year—

(1) fails to satisfy any requirement provided by section [409A] *409* with respect to a qualified investment made before January 1, 1983,

(2) fails to make any contribution which is required under section 48(n) within the period required for making such contribution,

(3) fails to satisfy any requirement provided under section [409A] *409* with respect to a credit claimed under section 44G in taxable years ending after December 31, 1982, or

(4) fails to make any contribution which is required under section 44G(c)(1)(B) within the period required for making such contribution,

the taxpayer shall pay a penalty in an amount equal to the amount involved in such failure.

* * * * * *

SEC. 6705. FAILURE TO FILE REPORTS ON LOANS COVERED BY MORTGAGE CREDIT CERTIFICATES.

(a) In General.—Any person required by section 25(g) to file a report with the Secretary who fails to file the report with respect to any mortgage credit certificate at the time and in the manner required by the Secretary shall pay a penalty of $200 for each such failure unless it is shown that such failure is due to reasonable cause and not to willful neglect.

(b) Deficiency Procedures Not To Apply.—Subchapter B of chapter 63 (relating to deficiency procedures for income, estate, gift, and certain excise taxes) shall not apply with respect to the assessment or collection of any penalty imposed by subsection (a).

CHAPTER 69—GENERAL PROVISIONS RELATING TO STAMPS

* * * * * * *

SEC. 6801. AUTHORITY FOR ESTABLISHMENT, ALTERATION, AND DISTRIBUTION.

(a) Establishment and Alteration.—The Secretary may establish, and from time to time alter, renew, replace, or change the form, style, character, material, and device of any stamp, mark, or label under any provision of the laws relating to internal revenue.

(b) Preparation and Distribution of Regulations, Forms, Stamps and Dies.—The Secretary shall prepare and distribute all the instructions, regulations, directions, forms, blanks, and stamps; and shall provide proper and sufficient adhesive stamps and other stamps or dies for expressing and denoting the [several stamp taxes; except that stamps required by or prescribed pursuant to the provisions of section 5205 or section 5235 may be prepared and distributed by persons authorized by the Secretary, under such controls for the protection of the revenue as shall be deemed necessary].

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CHAPTER 75—CRIMES, OTHER OFFENSES, AND FORFEITURES

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Subchapter A—Crimes

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PART I—GENERAL PROVISIONS

* * * * * * *

SEC. 7203. WILLFUL FAILURE TO FILE RETURN, SUPPLY INFORMATION, OR PAY TAX.

Any person required under this title to pay any estimated tax or tax, or required by this title or by regulations made under authority thereof to make a return [(other than a return required under authority of section 6015)], keep any records, or supply any information, who willfully fails to pay such estimated tax or tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $25,000 ($100,000 in the case of a corporation), or imprisoned not more than 1 year, or both, together with the costs of prosecution. In the case of any person with respect to whom there is a failure to pay any estimated tax, this section shall not apply to such person with respect to such failure if there is no addition to tax under section 6654 or 6655 with respect to such failure.

* * * * * * *

SEC. 7207 FRAUDULENT RETURNS, STATEMENTS, OR OTHER DOCUMENTS.

Any person who willfully delivers or discloses to the Secretary any list, return, account, statement, or other document, known by him to be fraudulent or to be false as to any material matter, shall be fined not more than $10,000 ($50,000 in the case of a corporation), or imprisoned not more than 1 year, or both. Any person required pursuant to subsection (b) [or (c)] of section 6047 or pursuant to subsection (d) of section 6104 to furnish any information to the Secretary or any other person who willfully furnishes to the Secretary or such other person any information known by him to be fraudulent or to be false as to any material matter shall be fined not more than $10,000 ($50,000 in the case of a corporation), or imprisoned not more than 1 year, or both.

* * * * * * *

SEC. 7213. UNAUTHORIZED DISCLOSURE OF INFORMATION.

(a) Returns and Return Information.—

(1) Federal employees and other persons.—It shall be unlawful for any officer or employee of the United States or any person described in section 6103(n) (or an officer or employee of any such person), or any former officer or employee, willfully to disclose to any person, except as authorized in this title, any return or return information (as defined in section 6103(b)). Any violation of this paragraph shall be a felony punishable upon conviction by a fine in any amount not exceeding $5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution, and if such offense is committed by any officer or employee of the United States, he shall, in addition to any other punishment, be dismissed from office or discharged from employment upon conviction for such offense.

(2) State and other employees.—It shall be unlawful for any person (not described in paragraph (1)) willfully to disclose to any person, except as authorized in this title, any return or return information (as defined in section 6103(b)) acquired by him or another person under subsection (d), (i)(3)(B)(i), (l)(6), (7), **[**or (8),**]** *(8), or (9)* or (m)(2) or (4) of section 6103. Any violation of this paragrpah shall be a felony punishable by a fine in any amount not exceeding $5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution.

* * * * * * *

SEC. 7216. DISCLOSURE OR USE OF INFORMATION BY PREPARERS OF RETURNS.

(a) General Rule.—Any person who is engaged in the business of preparing, or providing services in connection with the preparation of, returns of the tax imposed by chapter 1, **[**or declarations or amended declarations of estimated tax under section 6015,**]** or any person who for compensation prepares any such return **[**or declaration**]** for any other person, and who—

(1) discloses any information furnished to him for, or in connection with, the preparation of any such return or declaration, or

(2) uses any such information for any purpose other than to prepare, or assist in preparing, any such return **[**or declaration**]**, shall be guilty of a misdemeanor, and, upon conviction thereof,

shall be fined not more than $1,000, or imprisoned not more than 1 year, or both, together with the costs of prosecution.

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CHAPTER 76—JUDICIAL PROCEEDINGS

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Subchapter B—Proceedings by Taxpayers and Third Parties

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SEC. 7429. REVIEW OF JEOPARDY ASSESSMENT PROCEDURES.

(a) Administrative Review.—* * *

(b) Judicial Review.—

(1) Actions permitted.—Within 30 days after the earlier of—

(A) the day the Secretary notifies the taxpayer of his determination described in subsection (a)(3), or

(B) the 16th day after the request described in subsection (a)(2) was made,

the taxpayer may bring a civil action against the United States in a district court of the United States for a determination under this subsection.

(2) Determination by district court.—Within 20 days after an action is commenced under paragraph (1), the district court shall determine whether or not—

(A) the making of the assessment under section 6851, 6861, or 6862, as the case may be, is reasonable under the circumstances, and

(B) the amount so assessed or demanded as a result of the action taken under section 6851, 6861, or 6862, is appropriate under the circumstances.

If the court determines that proper service was not made on the United States within 5 days after the date of the commencement of the action, the running of the 20-day period set forth in the preceding sentence shall not begin before the day on which proper service was made on the United States.

(3) Order of district court.—If the court determines that the making of such assessment is unreasonable or that the amount assessed or demanded is inappropriate, the court may order the Secretary to abate such assessment, to redetermine (in whole or in part) the amount assessed or demanded, or to take such other action as the court finds appropriate.

* * * * * * *

SEC. 7430. AWARDING OF COURT COSTS AND CERTAIN FEES.

(a) In General.—In the case of any civil proceeding which is—

(1) brought by or against the United States in connection with the determination, collection, or refund of any tax, interest, or penalty under this title, and

(2) brought in a court of the United States ([including the Tax Court], *including the Tax Court and the United States Claims Court),*

the prevailing party may be awarded a judgment for reasonable litigation costs incurred in such proceeding.

* * * * * * *

Subchapter C—The Tax Court

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PART I—ORGANIZATION AND JURISDICTION

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SEC. 7447. RETIREMENT.

(a) DEFINITIONS.—For purposes of this section—

* * * * * * *

(b) RETIREMENT.—

(1) Any judge [shall retire upon] *may retire at any time after* attaining the age of 70.

(2) Any judge who has attained the age of 65 may retire any time after serving as judge for 15 years or more.

(3) Any judge who is not reappointed following the expiration of the term of his office may retire upon the completion of such term, if (A) he has served as a judge of the Tax Court for 15 years or more and (B) not earlier than 9 months preceding the date of the expiration of the term of his office and not later than 6 months preceding such date, he advised the President in writing that he was willing to accept reappointment to the Tax Court.

(4) Any judge who becomes permanently disabled from performing his duties shall retire. Section 8335(a) of title 5 of the United States Code (relating to automatic separation from the service) shall not apply in respet of judges. Any judge who retires shall be designated "senior judge".

* * * * * * *

SEC. 7448. ANNUITIES TO SURVIVING SPOUSES AND DEPENDENT CHILDREN OF JUDGES.

(a) DEFINITIONS.—* * *

* * * * * * *

(h) ENTITLEMENT TO ANNUITY.—In case any judge electing under subsection (b) shall die while a judge after having rendered at least 5 years of civilian service computed as prescribed in subsection (n), for the last 5 years of which the salary deductions provided for by subsection (c) or the deposits required by subsection (d) have actually been made or the salary deductions required by the civil service retirement laws have actually been made—

(1) if such judge is survived by a surviving spouse but not by a dependent child, there shall be paid to such surviving spouse and annuity beginning with the day of the death of the judge or following the surviving spouse's attainment of the age of 50 years, whichever is the later, in an amount computed as provided in subsection (m); or

(2) if such judge is survived by a surviving spouse and a dependent child or children, there shall be paid to such surving spouse an immediate annuity in an amount computed as provided in subsection (m), and there shall also be paid to or on behalf of each such child an immediate annuity equal to one-half the amount of the annuity of such surviving spouse, but not to exceed [$900 per year divided by the number of such children or $360 per year,] *$4,644 per year divided by the number of such children or $1,548 per year,* whichever is lesser; or

(3) if such judge leaves no surviving spouse but leaves a surviving dependent child or children there shall be paid to or on behalf of each such child an immediate annuity equal to the

amount of the annuity to which such surviving spouse would have been entitled under paragraph (2) of this subsection had such spouse survived, but not to exceed [$480 per year.] *$5,580 per year divided by the number of such children or $1,860 per year, whichever is lesser.*

The annuity payable to a surviving spouse under this subsection shall be terminable upon such surviving spouse's death or remarriage. The annuity payable to a child under this subsection shall be terminable upon (A) his attaining the age of 18 years, (B) his marriage, or (C) his death, whichever first occurs, except that if such child is incapable of self-support by reason of mental or physical disability his annuity shall be terminable only upon death, marriage, or recovery from such disability. In case of the death of a surviving spouse of a judge leaving a dependent child or children of the judge surviving such spouse, the annuity of such child or children shall be recomputed and paid as provided in paragraph (3) of this subsection. In any case in which the annuity of a dependent child is terminated under this subsection, the annuities of any remaining dependent child or children, based upon the service of the same judge, shall be recomputed and paid as though the child whose annuity was so terminated had not survived such judge.

PART II—PROCEDURE

Sec. 7451. Fee for filing petition.
Sec. 7452. Representation of parties.
Sec. 7453. Rules of practice, procedure, and evidence.
Sec. 7454. Burden of proof in fraud, foundation manager, and transferee cases.
Sec. 7455. Service of process.
Sec. 7456. Administration of oaths and procurement of testimony.
Sec. 7457. Witness fees.
Sec. 7458. Hearings.
Sec. 7459. Reports and decisions.
Sec. 7460. Provisions of special application to divisions.
Sec. 7461. Publicity of proceedings.
Sec. 7462. Publication of reports.
Sec. 7463. Disputes involving [$5,000] *$10,000* or less.
Sec. 7464. Intervention by trustee of debtor's estate.
Sec. 7465. Provisions of special application to transferees.

* * * * * * *

SEC. 7542. RESPRESENTATION OF PARTIES.

The Secretary shall be represented by the Chief Counsel for the Internal Revenue Service or his delegate in the same manner before the Tax Court as he has heretofore been represented in proceedings before such Court. The taxpayer shall continue to be represented in accordance with the rules of practice prescribed by the Court. [No qualified person shall be denied admission to practice before the Tax Court because of his failure to be a member of any profession or calling.]

* * * * * * *

SEC. 7456. ADMINISTRATION OF OATHS AND PROCUREMENT OF TESTIMONY.

(a) In General.—For the efficient administration of the functions vested in the Tax Court or any division thereof, any judge or [commissioner] *special trial judge* of the Tax Court, the clerk of the court or his deputies, as such, or any other employee of the Tax Court designated in writing for the purpose by the chief judge, may administer oaths, and any judge or **[**commissioner**]** *special trial judge* of the Tax Court may examine witnesses and require, by subpoena ordered by the Tax Court or any division thereof and signed by the judge or **[**commissioner**]** *special trial judge* (or by the clerk of the Tax Court or by any other employee of the Tax Court when acting as deptuy clerk)—

(1) the attendance and testimony of witnesses, and the production of all necessary returns, books, papers, documents, correspondence, and other evidence, from any place in the United States at any designated place of hearing, or

(2) the taking of a deposition before any designated individual competent to administer oaths under this title. In the case of a deposition the testimony shall be reduced to writing by the individual taking the deposition or under his direction and shall then be subscribed by the deponent.

* * * * * * *

(c) **[**Commissioners**]** *Special Trial Judges.*—The chief judge may from time to time appoint **[**commissioners**]** *special trial judges* who shall proceed under such rules and regulations as may be promulgated by the Tax Court, Each **[**commissioner**]** *special trial judge* shall receive pay at an annual rate determined under section 225 of the Federal Salary Act of 1967 (2 U.S.C. 351-361), as adjusted by section 461 of title 28, United States Code, and also necessary traveling expenses and per diem allowances, as provided in subchapter I of chapter 57 of title 5, United States Code, while traveling on official business and away from Washington, District of Columbia.

[(d) Proceedings Which May Be Assigned to Commissioners.—The chief judge may assign—

[(1) any declaratory judgment proceeding,

[(2) any proceeding under section 7463, and

[(3) any other proceeding where neither the amount of the deficiency placed in dispute (within the meaning of section 7463) nor the amount of any claimed overpayment exceeds $5,000,

to be heard by the commissioners of the court, and the court may authorize a commissioner to make the decision of the court with respect to any such proceeding, subject to such conditions and review as the court may by rule provide.**]**

(d) Proceedings Which May Be Assigned to Special Trial Judges.—The chief judge may assign—

(1) any declaratory judgment proceeding,

(2) any proceeding under section 7463,

(3) any proceeding where neither the amount of the deficiency placed in dispute (within the meaning of section 7463) nor the amount of any claimed overpayment exceeds $10,000, and

(4) any other proceeding which the chief judge may designate,

to be heard by the special trial judges of the court, and the court may authorize a special trial judge to make the decision of the court *with respect to any proceeding described in paragraph (1), (2), or (3), subject to such conditions and review as the court may provide.*

* * * * * * *

[SEC. 7461. PUBLICITY OF PROCEEDINGS.

[All reports of the Tax Court and all evidence received by the Tax Court and its divisions, including a transcript of the stenographic report of the hearings, shall be public records open to the inspection of the public; except that after the decision of the Tax Court in any proceeding has become final the Tax Court may, upon motion of the taxpayer or the Secretary, permit the withdrawal by the party entitled thereto of originals of books, documents, and records, and of models, diagrams, and other exhibits, introduced in evidence before the Tax Court or any division; or the Tax Court may, on its own motion, make such other disposition thereof as it deems advisable.]

SEC. 7461. PUBLICITY OF PROCEEDINGS.

(a) General Rule.—Except as provided in subsection (b), all reports of the Tax Court and all evidence received by the Tax Court and its divisions, including a transcript of the stenographic report of the hearings, shall be public records open to the inspection of the public.

(b) Exceptions.—

(1) Trade secrets or other confidential information.—The Tax Court may make any provision which is necessary to prevent the disclosure of trade secrets or other confidential information, including a provision that any document or information be placed under seal to be opened only as directed by the court.

(2) Evidence, etc.—After the decision of the Tax Court in any proceeding has become final, the Tax Court may, upon motion of the taxpayer or the Secretary, permit the withdrawal by the party entitled thereto of originals of books, documents, and records, and of models, diagrams, and other exhibits, introduced in evidence before the Tax Court or any division; of the Tax Court may, on its own motion, make such other disposition thereof as it deems advisable.

* * * * * * *

SEC. 7463. DISPUTES INVOLVING [$5,000] *$10,000* OR LESS.

(a) In General.—In the case of any petition filed with the Tax Court for a redetermination of a deficiency where neither the amount of the deficiency placed in dispute, nor the amount of any claimed overpayment, exceeds—

(1) [$5,000] *$10,000* for any one taxable year, in the case of the taxes imposed by subtitle A,

(2) [$5,000] *$10,000*, in the case of the tax imposed by chapter 11,

(3) [$5,000] *$10,000* for any one calendar year, in the case of the tax imposed by chapter 12, or

(4) [$5,000] *$10,000* for any 1 taxable period (or, if there is no taxable period, taxable event) in the case of any tax im-

posed by subtitle D which is described in section 6212(a) (relating to a notice of deficiency),

at the option of the taxpayer concurred in by the Tax Court or a division thereof before the hearing of the case, proceedings in the case shall be conducted under this section. Notwithstanding the provisions of section 7453, such proceedings shall be conducted in accordance with such rules of evidence, practice, and procedure as the Tax Court may prescribe. A decision, together with a brief summary of the reasons therefor, in any such case shall satisfy the requirements of sections 7459(b) and 7460.

(g) REPRESENTATION OF TAXPAYER.—In any case in which the proceedings are conducted under this section, any person who is—

(1) a certified public accountant, or

(2) an enrolled agent authorized to practice before the Internal Revenue Service,

shall be allowed to represent the taxpayer. Nothing in this subsection shall prevent the Tax Court from extending its rules of practice relating to suspension or disqualification to persons referred to in paragraph (1) or (2).

PART III—MISCELLANEOUS PROVISIONS

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SEC. 7471. EMPLOYEES.

(a) APPOINTMENT AND COMPENSATION.—* * *

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(c) [COMMISSIONERS] *SPECIAL TRIAL JUDGES*.—

For compensation and travel and subsistence allowances of [commissioners] *special trial judges* of the Tax Court, see section 7456(c).

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PART IV—DECLARATORY JUDGMENTS

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SEC. 7476. DECLARATORY JUDGMENTS RELATING TO QUALIFICATION OF CERTAIN RETIREMENT PLANS.

(a) CREATION OF REMEDY.—* * *

* * * * * * *

(c) RETIREMENT PLAN.—For purposes of this section, the term "retirement plan" means—

(1) a pension, profit-sharing, or stock bonus plan described in section 401(a) or a trust which is part of such a plan[,], *or*

(2) an annuity plan described in section 403(a)[, or].

[(3) a bond purchase plan described in section 405(a).]

* * * * * * *

CHAPTER 79—DEFINITIONS

Sec. 7701. Definitions.

Sec. 7702. Life insurance contract defined.

SEC. 7701. DEFINITIONS.

(a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof—

(1) Person.— * * *

* * * * * * *

(16) Withholding agent.—The term "withholding agent" means any person required to deduct and withhold any tax under the provisions of section 1441, 1442, 1443, [1451,] 1461 or 3451.

(17) Husband and wife.—As used in sections [71, 152(b)(4), 215, and 682] *152(b)(4) and 682,* if the husband and wife therein referred to are divorced, wherever appropriate to the meaning of such sections the term "wife" shall be read "former wife" and the term "husband" shall be read "former husband"; and, if the payments described in such sections are made by or on behalf of the wife or former wife to the husband or former husband instead of vice versa, wherever approriate to the meaning of such sections, the term "husband" shall be read "wife" and the term "wife" shall be read "husband."

* * * * * * *

[(34) Estimated income tax.—The term "estimated income tax" means—

[(A) in the case of an individual, the estimated tax as defined in section 6015(d) or

[(B) in the case of a corporation, the estimated tax as defined in section 6154(c).]

* * * * * * *

(37) Individual retirement plan.—The term "individual retirement plan" means—

(A) an individual retirement account described in section 408(a), *and*

(B) an individual retirement annuity described in section 408(b)[, and].

[(C) a retirement bond described in section 409.]

* * * * * * *

(b) Definition of Resident Alien and Nonresident Alien.—

(1) In general.—For purposes of this title (other than subtitle B)—

(A) Resident alien.—An alien individual shall be treated as a resident of the United States with respect to any calendar year if (and only if) such individual meets the requirements of clause (i) or (ii):

(i) Lawfully admitted for permanent residence.—Such individual is a lawful permanent resident of the United States at any time during such calendar year.

(ii) SUBSTANTIAL PRESENCE TEST.—Such individual meets the substantial presence test of paragraph (3).

(B) NONRESIDENT ALIEN.—An individual is a nonresident alien if such individual is neither a citizen of the United States nor a resident of the United States (within the meaning of subparagraph (A)).

(2) SPECIAL RULES FOR FIRST AND LAST YEAR OF RESIDENCY.—

(A) FIRST YEAR OF RESIDENCY.—

(i) IN GENERAL.—If an alien individual is a resident of the United States under paragraph (1)(A) with respect to any calendar year, but was not a resident of the United States at any time during the preceding calendar year, such alien individual shall be treated as a resident of the United States only for the portion of such calendar year which begins on the residency starting date.

(ii) RESIDENCY STARTING DATE FOR INDIVIDUALS LAWFULLY ADMITTED FOR PERMANENT RESIDENCE.—In the case of an individual who is a lawful permanent resident of the United States at any time during the calendar year, but does not meet the substantial presence test of paragraph (3), the residency starting date shall be the first day in such calendar year on which he was present in the United States while a lawful permanent resident of the United States.

(iii) RESIDENCY STARTING DATE FOR INDIVIDUALS MEETING SUBSTANTIAL PRESENCE TEST.—In the case of an individual who meets the substantial presence test of paragraph (3) with respect to any calendar year, the residency starting date shall be the first day during such calendar year on which the individual is present in the United States.

(B) LAST YEAR OF RESIDENCY.—An alien individual shall not be treated as a resident of the United States during the portion of any calendar year if—

(i) such portion is after the last day in such calendar year on which the individual was present in the United States (or, in the case of an individual described in paragraph (1)(A)(i), the last day on which he was so described),

(ii) during such portion the individual has a closer connection to a foreign country than to the United States, and

(iii) the individual is not a resident of the United States at any time during the next calendar year.

(C) CERTAIN NOMINAL PRESENCE DISREGARDED.—

(i) IN GENERAL.—For purposes of subparagraphs (A) and (B), an individual shall not treated as present in the United States during any period for which the individual establishes that he has a closer connection to a foreign country than to the United States.

(ii) NOT MORE THAN 10 DAYS DISREGARDED.—Clause (i) shall not apply to more than 10 days on which the individual is present in the United States.

(3) SUBSTANTIAL PRESENCE TEST.—

(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), an individual meets the substantial presence test of this paragraph with respect to any calendar year (hereinafter in this subsection referred to as the 'current year') if—

(i) such individual was present in the United States on at least 31 days during the calendar year, and

(ii) the sum of the number of days on which such individual was present in the United States during the current year and the 2 preceding calendar years (when multiplied by the applicable multiplier determined under the following table) equals or exceeds 183 days.

In the case of days in:	***The applicable multiplier is:***
Current year	*1*
1st preceding year	⅓
2nd preceding year	⅙

(B) EXCEPTION WHERE INDIVIDUAL IS PRESENT IN THE UNITED STATES DURING LESS THAN ONE-HALF OF CURRENT YEAR AND CLOSER CONNECTION TO FOREIGN COUNTRY IS ESTABLISHED.—An individual shall not be treated as meeting the substantial presence test of this paragraph with respect to any current year if—

(i) such individual is present in the United States on fewer than 183 days during the current year, and

(ii) it is established that for the current year such individual has a tax home (as defined in section 911(d)(3) without regard to the second sentence thereof) in a foreign country and has a closer connection to such foreign country than to the United States.

(C) SUBPARAGRAPH (b) NOT TO APPLY IN CERTAIN CASES.—Subparagraph (B) shall not apply to any individual with respect to any current year if at any time during such year—

(i) such individual had an application for adjustment of status pending, or

(ii) such individual took other steps to apply for status as a lawful permanent resident of the United States.

(D) MEDICAL CONDITION EXCEPTION FOR SUBPARAGRAPH (B)(i).—Clause (i) of subparagraph (B) shall not apply to any individual who as unable to leave the United States because of a medical condition which arose while such individual was present in the United States.

(E) EXCEPTION FOR EXEMPT INDIVIDUALS.—An individual shall not be treated as meeting the substantial presence test of this paragraph with respect to any current year if such individual is an exempt individual for such year.

(3) EXEMPT INDIVIDUAL DEFINED. For purposes of this subsection.—

(A) IN GENERAL.—Except as provided in subparagraph (B), an individual is an exempt individual for the current

year if, for that portion of the year during which such individual is present in the United States, such individual is—

(i) a foreign government-related individual,

(ii) a teacher or trainee, or

(iii) a student.

(B) FACTS AND CIRCUMSTANCES INDICATE INTENT TO PERMANENTLY RESIDE IN THE UNITED STATES.—An individual shall not be treated as an exempt individual if the facts and circumstances indicate that such individual intends to permanently reside in the United States.

(C) FOREIGN GOVERNMENT-RELATED INDIVIDUAL.—The term "foreign government-related individual" means any individual temporarily present in the United States by reason of—

(i) diplomatic status, or a visa which the Secretary (after consultaton with the Secretary of State) determines represents full-time diplomatic or consular status for purposes of this subsection,

(ii) being a full-time employee of an international organization, or

(iii) being a member of the immediate family of an individual described in clause (i) or (ii).

(D) TEACHER OR TRAINEE.—The term "teacher or trainee" means any individual—

(i) who is temporarily present in the United States under subparagraph (J) of section 101(15) of the Immigration and Nationality Act (other than as a student), and

(ii) who substantially complies with the requirements for being so present.

(E) STUDENT.—The term "student" means any individual—

(i) who is temporarily present in the United States—

(I) under subparagraph (F) of section 101(15) of the Immigration and Nationality Act, or

(II) as a student under subparagraph (J) of such section 101(15), and

(ii) who substantially complies with the requirements for being so present.

(F) SPECIAL RULES FOR TEACHERS, TRAINEES, AND STUDENTS.—

(i) LIMITATION ON TEACHERS AND TRAINEES.—An individual shall not be treated as an exempt individual by reason of clause (ii) of subparagraph (A) for the current year if, for any 2 calendar years during the preceding 6 calendar years, such person was an exempt person under clause (ii) or (iii) of subparagraph (A).

(ii) LIMITATION ON STUDENTS.—For any calendar year after the 5th calendar year for which an individual was an exempt individual under clause (ii) or (iii) of subparagraph (A), such individual shall not be treated as an exempt individual by reason of clause (iii) of subparagraph (A), unless such individual establishes to the satisfaction of the Secretary that such individual

does not intend to permanently reside in the United States and that such individual meets the requirements of subparagraph (E)(ii).

(4) LAWFUL PERMANENT RESIDENT.—For purposes of this subsection, an individual is a lawful permanent resident of the United States at any time if—

(A) such individual has the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, and

(B) such status has not been revoked (and has not been administratively or judicially determined to have been abandoned).

(5) PRESENCE IN THE UNITED STATES.—For purposes of this subsection—

(A) IN GENERAL.—Except as provided in subparagraph (B), an individual shall be treated as present in the United States on any day if such individual is physically present in the United States at any time during such day.

(B) COMMUTERS FROM CANADA OR MEXICO.—If an individual regularly commutes to employment (or self-employment) in the United States from a place of residence in Canada or Mexico, such individual shall not be treated as present in the United States on any day during which he so commutes.

(6) ANNUAL STATEMENTS.—The Secretary may prescribe regulations under which an individual who (but for subparagraph (B), (D), or (E) of paragraph (3)) would meet the substantial presence test of paragraph (3) is required to submit an annual statement setting forth the basis on which such individual claims the benefits of subparagraph (B), (D), or (E) of paragraph (3), as the case may be.

(7) TAXABLE YEAR.—

(A) IN GENERAL.—For purposes of this title, an alien individual who has not established a taxable year for any prior period shall be treated as having a taxable year which is the calendar year.

(B) FISCAL YEAR TAXPAYER.—If—

(i) an individual is treated under paragraph (1) as a resident of the United States for any calendar year, and

(ii) after the application of subparagraph (A), such individual has a taxable year other than a calendar year,

he shall be treated as a resident of the United States with respect to any portion of a taxable year which is within such calendar year.

[(b)] *(c)* INCLUDES AND INCLUDING.—The terms "includes" and "including" when used in a definition contained in this title shall not be deemed to exclude other things otherwise within the meaning of the term defined.

[(c)] *(d)* COMMONWEALTH OF PUERTO RICO.—Where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, references in this title to possessions of the United

States shall be treated as also referring to the Commonwealth of Puerto Rico.

[(d)**]** *(e)* CROSS REFERENCES.—

(1) OTHER DEFINITIONS.—

For other definitions, see the following sections of Title 1 of the United States Code:

(1) Singular as including plural, section 1.

(2) Plural as including singular, section 1.

(3) Masculine as including feminine, section 1.

(4) Officer, section 1.

(5) Oath as including affirmation section 1.

(6) County as including parish, section 2.

(7) Vessel as including all means of water transportation, section 3.

(8) Vehicle as including all means of land transportation, section 4.

(9) Company or association as including successors and assigns, section 5.

(2) EFFECTS OF CROSS REFERENCES.—

For effect of cross references in this title, see section 7806 (a).

SEC. 7702. LIFE INSURANCE CONTRACT DEFINED.

(a) GENERAL RULE.—For purposes of this title, the term "life insurance contract" means any contract which is a life insurance contract under the applicable law, but only if such contract—

(1) meets the cash value accumulation test of subsection (b), or

(2)(A) meets the guideline premium requirements of subsection (c), and

(B) falls within the cash value corridor of subsection (d).

(b) CASH VALUE ACCUMULATION TEST FOR SUBSECTION (a)(1).—

(1) IN GENERAL.—A contract meets the cash value accumulation test of this subsection if, by the terms of the contract, the cash surrender value of such contract may not at any time exceed the net single premium which would have to be paid at such time to fund future benefits under the contract.

(2) RULES FOR APPLYING PARAGRAPH (1).—Determinations under paragraph (1) shall be made—

(A) on the basis of interest at the greater of an annual effective rate of 4 percent or the rate or rates guaranteed on issuance of the contract, and

(B) on the basis of the rules of subparagraphs (B)(i) and (C) (and, in the case of qualified additional benefits, subparagraph (B)(ii) of subsection (c)(3).

(c) GUIDELINE PREMIUM REQUIREMENTS.—For purposes of this section—

(1) IN GENERAL.—A contract meets the guideline premium requirements of this subsection if the sum of the premiums paid under such contract does not at time exceed the guideline premium limitations as of such time.

(2) GUIDELINE PREMIUM LIMITATION.—The term "guideline premium limitation" means, as of any date, the greater of—

(A) the guideline single premium, or

(B) the sum of the guideline level premiums to such date.

(3) Guideline single premium.—

(A) In general.—The term "guideline single premium" means the premium at issue with respect to future benefits under the contract.

(B) Basis on which determination is made.—The determination under subparagraph (A) shall be based on—

(i) the mortality charges specified in the contract (or, if none is specified, the mortality charges used in determining the statutory reserves for such contract),

(ii) any charges (not taken into account under clause (i)) specified in the contract (the amount of any charge not so specified shall be treated as zero), and

(iii) interest at the greater of an annual effective rate of 6 percent or the minimum rate or rates guaranted on issuance of the contract.

(C) When determination made.—Except as provided in subsection (f)(6), the determination under subparagraph (A) shall be made as of the time the contract is issued.

(4) Guideline Level Premium.—The term "guideline level premium" means the level annual amount, payable over a period not ending before the insured attains age 95, computed on the same basis as the guideline single premium, except that paragraph (3)(B)(iii) shall be applied by substituting "4 percent" for "6 percent".

(d) Cash Value Corridor for Purposes of Subsection (a)(2)(B).—For purposes of this section—

(1) In general.—A contract falls within the cash value corridor of this subsection if the death benefit under the contract at any time is not less than the applicable percentage of the cash surrender value.

(2) Applicable Percentage.—

"In the case of an insured with an attained age as of the beginning of the contract year of:		*The applicable percentage shall decrease by a ratable portion for each full year:*	
More than:	*But not more than:*	*From:*	*To:*
0	*40*	*250*	*250*
40	*45*	*250*	*215*
45	*50*	*215*	*185*
50	*55*	*185*	*150*
55	*60*	*150*	*130*
60	*65*	*130*	*120*
65	*70*	*120*	*115*
70	*75*	*115*	*105*
75	*90*	*105*	*105*
90	*95*	*105*	*100.*

(e) Computational Rules.—

(1) In general.—For purposes of this section—

(A) the death benefit (and any qualified additional benefit) shall be deemed not to increase,

(B) the maturity date shall be no earlier than the day on which the insured attains age 95, and

(C) the amount of any endowment benefit (or sum of endowment benefits) shall be deemed not to exceed the least

amount payable as a death benefit at any time under the contract.

(2) LIMITED INCREASES IN DEATH BENEFIT PERMITTED.—Notwithstanding paragraph (1)(A)—

(A) for purposes of computing the guideline level premium, an increase in the death benefit which is provided in the contract may be taken into account but only to the extent necessary to prevent a decrease in the excess of the death benefit over the cash surrender value of the contract, and

(B) for purposes of the cash value accumulation test, the increase described in subparagraph (A) may be taken into account if the cash surrender value of the contract may not at any time exceed the net level reserve (determined as if level annual premiums were paid for the contract over a period not ending before the insured attains age 95).

(f) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) PREMIUMS PAID.—

(A) IN GENERAL.—The term "premiums paid" means the premiums paid under the contract less amounts (other than amounts includible in gross income) to which section 72(e) applies.

(B) TREATMENT OF CERTAIN PREMIUMS RETURNED TO POLICYHOLDER.—If, in order to comply with the requirements of subsection (a)(2)(A), any portion of any premium paid during any contract year is returned by the insurance company (with interest) within 60 days after the end of a contract year, the amount so returned (excluding interest) shall be deemed to reduce the sum of the premiums paid under the contract during such year.

(C) INTEREST RETURNED INCLUDIBLE IN GROSS INCOME.—Notwithstanding the provisions of section 72(e), the amount of any interest returned as provided in subparagraph (B) shall be includible in the gross income of the recipient.

(2) CASH VALUES.—

(A) CASH SURRENDER VALUE.—The cash surrender value of any contract shall be its cash value determined without regard to any surrender charge, policy loan, or reasonable termination dividends.

(B) NET SURRENDER VALUE.—The net surrender value of any contract shall be determined with regard to surrender charges but without regard to any policy loan.

(3) DEATH BENEFIT.—The term "death benefit" means the amount payable by reason of the death of the insured (determined without regard to any qualified additional benefits).

(4) FUTURE BENEFITS.—The term "future benefits" means death benefits and endowment benefits.

(5) QUALIFIED ADDITIONAL BENEFITS.—

(A) IN GENERAL.—The term "qualified additional benefits" means any—

(i) guaranteed insurability,

(ii) accidental death or disability benefit,

(iii) family term coverage,

(iv) disability waiver benefit, or

(v) any other benefit prescribed under regulations.

(B) TREATMENT OF QUALIFIED ADDITIONAL BENEFITS.—For purposes of this section, qualified additional benefits shall not be treated as future benefits under the contract, but the charges for such benefits shall be treated as future benefits.

(C) TREATMENT OF OTHER ADDITIONAL BENEFITS.—In the case of any additional benefit which is not a qualified additional benefit—

(i) such benefit shall not be treated as a future benefit, and

(ii) any charge for such benefit which is not prefunded shall not be treated as a premium.

(6) PREMIUM PAYMENTS NOT DISQUALIFYING CONTRACT.—The payment of a premium which would result in the sum of the premiums paid exceeding the guideline premium limitation shall be disregarded for purposes of subsection (a)(2) if the amount of such premium does not exceed the amount necessary to prevent the termination of the contract on or before the end of the contract year (but only if the contract will have no cash surrender value at the end of such extension period).

(7) ADJUSTMENTS.—

(A) IN GENERAL.—In the event of a change in the future benefits or any qualified additional benefit (or in any other terms) under the contract which was not reflected in any previous determination made under this section, under regulations prescribed by the Secretary there shall be proper adjustments in future determinations made under this section.

(B) CERTAIN CHANGES TREATED AS EXCHANGE.—In the case of any change which reduces the future benefits under the contract, such change shall be treated as an exchange of the contract for another contract.

(8) CORRECTION OF ERRORS.—If the taxpayer establishes to the satisfaction of the Secretary that—

(A) the requirements described in subsection (a) for any contract year were not satisfied due to reasonable error, and

(B) reasonable steps are being taken to remedy the error,

the Secretary may waive the failure to satisfy such requirements.

(9) SPECIAL RULE FOR VARIABLE LIFE INSURANCE CONTRACTS.—In the case of any contract which is a variable contract (as defined in section 817), the determination of whether such contract meets the requirements of subsection (a) shall be made whenever the death benefits under such contract change but not less frequently than once during each 12-month period.

(g) TREATMENT OF CONTRACTS WHICH DO NOT MEET SUBSECTION (a) TEST.—

(1) INCOME INCLUSION.—

(A) IN GENERAL.—If at any time any contract which is a life insurance contract under the applicable law does not meet the definition of life insurance contract under subsection (a), the income on the contract for any taxable year of

the policyholder shall be treated as ordinary income received or accrued by the policyholder during such year.

(B) INCOME ON THE CONTRACT.—For purposes of this paragraph, the term "income on the contract" means, with respect to any taxable year of the policyholder, the excess of—

(i) the sum of—

(I) the increase in the net surrender value of the contract during the taxable year, and

(II) the cost of life insurance protection provided under the contract during the taxable year, over

(ii) the amount of premiums paid under the contract during the taxable year reduced by any policyholder dividends received during such taxable year.

(C) CONTRACTS WHICH CEASE TO MEET DEFINITION.—If, during any taxable year of the policyholder, a contract which is a life insurance contract under the applicable law ceases to meet the definition of life insurance contract under subsection (a), the income on the contract for all prior taxable years shall be treated as received or accrued during the taxable year in which such cessation occurs.

(D) COST OF LIFE INSURANCE PROTECTION.—For purposes of this paragraph, the cost of life insurance protection provided under the contract shall be the lesser of—

(i) the cost of individual insurance on the life of the insured as determined on the basis of uniform premiums (computed on the basis of 5-year age brackets) prescribed by the Secretary by regulations, or

(ii) the mortality charge (if any) stated in the contract.

(2) TREATMENT OF AMOUNT PAID ON DEATH OF INSURED.—If any contract which is a life surance contract under the applicable law does not meet the definition of life insurance contract under subsection (a), the excess of the amount paid by the reason of the death of the insured over the net surrender value of the contract shall be deemed to be paid under a life insurance contract for purposes of section 101 and subtitle B.

(3) CONTRACT CONTINUES TO BE TREATED AS INSURANCE CONTRACT.—If any contract which is a life insurance contract under the applicable law does not meet the definition of life insurance contract under subsection (a), such contract shall, notwithstanding such failure, be treated as an insurance contract for purposes of this title.

(h) ENDOWMENT CONTRACTS RECEIVE SAME TREATMENT.—

(1) IN GENERAL.—References in subsections (a) and (g) to a life insurance contract shall be treated as including references to a contract which is an endowment contract under the applicable law.

(2) DEFINITION OF ENDOWMENT CONTRACT.—For purposes of this title (other than paragraph (1)), the term "endowment contract" means a contract which is an endowment contract under the applicable law and which meets the requirements of subsection (a).

(i) Transitional Rule for Contracts Issued During 1984 or Pursuant to Existing Plans of Insurance.—

(1) Contracts issued during 1984.—In the case of any contract which is issued during 1984, such contract shall be treated as meeting the requirements of subsection (a) if—

(A) such contract would meet the requirements of section 101(f), or

(B) such contract is not a flexible premium life insurance contract (within the meaning of section 101(f)) and would meet the requirements of subsection (a) determined by substituting "3 percent" or "4 percent" in subsection (b)(2) of this section.

(2) Certain contracts issued pursuant to existing plans of insurance.—

(A) In general.—In the case of a qualified 20-pay contract, this section shall be applied by substituting "3 percent" for "4 percent" in subsection (b)(2).

(B) Qualified 20-pay contract.—For purposes of subparagraph (A), the term "qualified 20-pay contract" means any contract which—

(i) requires at least 20 nondecreasing annual premium payments, and

(ii) is issued pursuant to an existing plan of insurance.

(C) Existing plan of insurance.—For purposes of subparagraph (B)(ii), the term "existing plan of insurance" means, with respect to any contract, any plan of insurance which was filed by the company issuing such contract in 1 or more States before September 28, 1983, and is on file in the appropriate State for such contract.

(j) Regulations.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.

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CHAPTER 80—GENERAL RULES

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Subchapter A—Application of Internal Revenue Laws

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SEC. 7810. REVOLVING FUND FOR REDEMPTION OF REAL PROPERTY.

(a) Establishment of Fund.—There is established a revolving fund, under the control of the Secretary, which shall be available without fiscal year limitation for all expenses necessary for the redemption (by the Secretary) of real property as provided in section 7425(d) and section 2410 of title 28 of the United States Code. There are authorized to be appropriated from time to time such sums (not to exceed **[**$1,000,000**]** *$10,000,000* in the aggregate) as may be necessary to carry out the purposes of this section.

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Subchapter C—Provisions Affecting More Than One Subtitle

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SEC. 7871. INDIAN TRIBAL GOVERNMENTS TREATED AS STATES FOR CERTAIN PURPOSES.

(a) General Rule.—An Indian tribal government shall be treated as a State—

(1) for purposes of determining whether and in what amount any contribution or transfer to or for the use of such government (or a political subdivision thereof) is deductible under—

(A) section 170 (relating to income tax deduction for charitable, etc., contributions and gifts),

(B) sections 2055 and 2106(a)(2) (relating to estate tax deduction for transfers of public, charitable, and religious uses), or

(C) section 2522 (relating to gift tax deduction for charitable and similar gifts);

(2) subjects to subsection (b), for purposes of any exemption from, credit or refund of, or payment with respect to, an excise tax imposed by—

(A) chapter 31 (relating to tax on special fuels),

(B) chapter 32 (relating to manufacturers excise taxes),

(C) subchapter B of chapter 33 (relating to communications excise tax), or

(D) subchapter D of chapter 36 (relating to tax on use of certain highway vehicles);

(3) for purposes of section 164 (relating to deduction for taxes);

(4) subject to subsection (c), for purposes of section 103 (relating to interest on certain governmental obligations);

(5) for purposes of section 511(a)(2)(B) (relating to the taxation of colleges and universities which are agencies or instrumentalities of governments or their political subdivisions);

(6) for purposes of—

(A) section [41(c)(4)] *24(c)(4)* (defining State for purposes of credit for contribution to candidates for public offices),

(B) section 117(b)(2)(A) (relating to scholarships and fellowship grants), and

(C) section 403(b)(1)(A)(ii) (relating to the taxation of contributions of certain employers for employee annuities); and

(7) for purposes of—

(A) chapter 41 (relating to tax on excess expenditures to influence legislation), and

(B) subchapter A of chapter 42 (relating to private foundations).

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Subtitle I—Trust Fund Code

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Subchapter A—Establishment of Trust Funds

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CHAPTER 98—TRUST FUND CODE

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SEC. 9502. AIRPORT AND AIRWAY TRUST FUND.

(a) CREATION OF TRUST FUND.— * * *

(b) TRANSFER TO AIRPORT AND AIRWAY TRUST FUND OF AMOUNTS EQUIVALENT TO CERTAIN TAXES.—There is hereby appropriated to the Airport and Airway Trust Fund—

(1) amounts equivalent to the taxes received in the Treasury after August 31, 1982, and before January 1, 1988, under subsections (c) and (d) of section 4041 (taxes on aviation fuel) and under sections 4261 and 4271 (taxes on transportation by air);

(2) amounts determined by the Secretary of the Treasury to be equivalent to the taxes received in the Treasury after August 31, 1982, January 1, 1988, under section 4081, with respect to gasoline used in aircraft; and

(3) amounts determined by the Secretary of the Treasury to be equivalent to the taxes received in the Treasury after August 31, 1982, January 1, 1988 **[**under paragraphs (2) and (3) of section 4071(a), with respect to tires and tubes of the types used on aircraft**]** *under section 4071 with respect to tires of the types used on aircraft.*

* * * * * * *

(d) EXPENDITURES FROM AIRPORT AND AIRWAY TRUST FUND.—

(1) AIRPORT AND AIRWAY PROGRAM.—Amounts in the Airport and Airway Trust Fund shall be available, as provided by appropriation Acts, for making expenditures before October 1, 1987, to meet those obligations of the United States—

(A) incurred under title I of the Airport and Airway Development Act of 1970 or of the Airport and Airway Development Act Amendments of 1976 or of the Aviation Safety and Noise Abatement Act of 1979 (as such Acts were in effect on the date of enactment of the Fiscal Year 1981 Airport Development Authorization Act) or under the Fiscal Year 1981 Airport Development Authorization Act or the provisions of the Airport and Airway Improvement Act of 1982 (as such Acts were in effect on the date of the enactment of the Surface Transportation Assistance Act of 1982);

(B) heretofore or hereafter incurred under the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301 et seq.), which ar attributable to planning, research and development, construction, or operation and maintenance of—

(i) air traffic control,
(ii) air navigation,
(iii) communications, or
(iv) supporting services,

for the airway system; or

(C) for those portions of the administrative expenses of the Department of Transportation which are attributable to activities described in subparagraph (A) or (B).

(2) TRANSFERS FROM AIRPORT AND AIRWAY TRUST FUND ON ACCOUNT OF CERTAIN REFUNDS.—The Secretary of the Treasury shall pay from time to time from the Airport and Airway Trust Fund into the general fund of the Treasury amounts equivalent to the amounts paid after August 31, 1982, in respect of fuel used in aircraft, under section 6420 (relating to amounts paid in respect of gasoline used on farms), 6421 (relating to amounts paid in respect of gasoline used for certain nonhighway purposes), or 6427 (relating to fuels not used for taxable purposes).

(3) TRANSFERS FROM THE AIRPORT AND AIRWAY TRUST FUND ON ACCOUNT OF CERTAIN SECTION **[**39**]** *34* CREDITS.—The Secretary of the Treasury shall pay from time to time from the Airport and Airway Trust Fund into the general fund of the Treasury amounts equivalent to the credits allowed under section **[**39**]** *34* with respect to fuel used after August 31, 1982. Such amounts shall be transferred on the basis of estimates by the Secretary of the Treasury, and proper adjustments shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or less than the credits allowed.

SEC. 9503. HIGHWAY TRUST FUND.

(a) CREATION OF TRUST FUND.—* * *

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(c) EXPENDITURES FROM HIGHWAY TRUST FUND.—

(1) FEDERAL-AID HIGHWAY PROGRAM.—Except as provided in subsection (e), amounts in the Highway Trust Fund shall be available, as provided by appropriation Acts, for making expenditures before October 1, 1988, to meet those obligations of the United States heretofore or hereafter incurred which are—

(A) authorized by law to be paid out of the Highway Trust Fund established by section 209 of the Highway Revenue Act of 1956,

(B) authorized to be paid out of the Highway Trust Fund under title I or II of the Surface Transportation Assistance Act of 1982, or

(C) hereafter authorized by a law which does not authorize the expenditure out of the Highway Trust Fund of any amount for a general purpose not covered by subparagraph (A) or (B) as in effect on December 31, 1982.

(2) TRANSFERS FROM HIGHWAY TRUST FUND FOR CERTAIN REPAYMENTS AND CREDITS.—

(A) IN GENERAL.—The Secretary shall pay from time to time from the Highway Trust Fund into the general fund of the Treasury amounts equivalent to—

(i) the amounts paid before July 1, 1989, under—

(I) section 6420 (relating to amounts paid in respect to gasoline used on farms),

(II) section 6421 (relating to amounts paid in respect of gasoline used for certain nonhighway purposes or by local transit systems),

(III) section 6424 (relating to amounts paid in respect of lubricating oil used for certain nontaxable purposes), and

(IV) section 6427 (relating to fuels not used for taxable purposes),

on the basis of claims filed for periods ending before October 1, 1988, and

(ii) the credits allowed under section [39] *34* (relating to credit for certain uses of gasoline, special fuels, and lubricating oil) with respect to gasoline, special fuels, and lubricating oil used before October 1, 1988.

(B) TRANSFERS BASED ON ESTIMATES.—Transfers under subparagraph (A) shall be made on the basis of estimates by the Secretary, and proper adjustments shall be made in amounts subsequently transferred to the extent prior estimates were in excess or less than the amounts required to be transferred.

(C) EXCEPTION FOR USE IN AIRCRAFT AND MOTORBOATS.—This paragraph shall not apply to amounts estimated by the Secretary as attributable to use of gasoline and special fuels in motorboats or in aircraft.

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SECTION 506 OF THE REVENUE ACT OF 1971

[SEC. 506. SUBMISSION OF ANNUAL REPORTS TO CONGRESS.

[The Secretary of the Treasury shall, commencing for the calendar year 1972, submit an annual report to the Congress within 15½ months following the close of each calendar year setting forth an analysis of the operation and effect of the provisions of this title.]

SEC. 506. SUBMISSION OF REPORTS TO CONGRESS.

The Secretary of the Treasury shall, for the calendar year 1981 and each second calendar year thereafter, submit a report to the Congress within 27½ months following the close of such calendar year setting forth an analysis of the operation and effect of the provisions of this title.

TAX REFORM ACT OF 1976

* * * * * * *

TITLE X—CHANGES IN THE TREATMENT OF FOREIGN INCOME

* * * * * * *

PART VI—DENIAL OF CERTAIN TAX BENEFITS FOR COOPERATION WITH OR PARTICIPATION IN INTERNATIONAL BOYCOTTS AND IN CONNECTION WITH THE PAYMENT OF CERTAIN BRIBES

* * * * * * *

SEC. 1067. REPORTS BY SECRETARY.

[(a) REPORTS TO THE CONGRESS.—As soon after the close of each calendar year as the data become available, the Secretary shall transmit a report to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate setting forth, for that calendar year—

[(1) the number of reports filed under section 999(a) of the Internal Revenue Code of 1954 for taxable years ending with or within such taxable year,

[(2) the number of such reports on which the taxpayer indicated international boycott participation or cooperation (within the meaning of section 999(b)(3) of such Code), and

[(3) a detailed description of the manner in which the provisions of such Code relating to international boycott activity have been administered during such calendar year.

[(b) INITIAL LIST.—The Secretary of the Treasury shall publish an initial list of those counties which may require participation in or cooperation with an international boycott as a condition of doing business within such country, or with the government, a company, or a national of such country (within the meaning of section 999(b) of the Internal Revenue Code of 1954) within 30 days after the enactment of this Act.]

SEC. 1067. REPORTS BY THE SECRETARY.

(a) GENERAL RULE. —As soon after the close of each 4-year period as the data become available, the Secretary shall transmit a report to the Committee on Ways and Means of the House of Representatives and to the Commitee on Finance of the Senate setting forth for such 4-year period—

(1) the number of reports filed under section 999(a) of the Internal Revenue Code of 1954 for taxable years ending with or within each calendar year in such 4-year period,

(2) the number of such reports with respect to each such calendar year on which the taxpayer indicated international boycott participation or cooperation (within the meaning of section 999(b)(3) of such Code), and

(3) a detailed description of the manner in which the provisions of such Code relating to international boycott activity have been administered during such 4-year period.

(b) 4-YEAR PERIOD.— For purposes of subsection (a), the term "4-year period" means the period consisting of 4 calendar years beginning with calendar year 1983 and each subsequent fourth calendar year.

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TITLE XXI—MISCELLANEOUS PROVISIONS

* * * * * * *

[SEC. 2123. HIGH INCOME TAXPAYER REPORT.

[The Secretary of the Treasury shall publish annually information on the amount of tax paid by individual taxpayers with high total incomes. Total income for this purpose is to be calculated and set forth in three ways:

[(1) by adding to adjusted gross income any items of tax preference excluded from, or deducted in arriving at, adjusted gross income,

[(2) by subtracting any investment expenses incurred in the production of such income to the extent of the investment income, and

[(3) by making both of the adjustments referred to in paragraphs (1) and (2).

In any event these data are to include the number of such individuals with total income over $200,000 who own no Federal income tax (after credits) and the deductions, exclusions or credits used by them to avoid tax.]

SEC. 2123. HIGH INCOME TAXPAYER REPORT.

The Secretary of the Treasury shall publish annually information on the amount of tax paid by individual taxpayers with high total incomes. Total income for this purpose is to be calculated and set forth by adding to adjusted gross income any items of tax preference excluded from, or deducted in arriving at, adjusted gross income, and by subtracting any investment expenses incurred in the production of such income to the extent of the investment income. These data are to include the number of such individuals with total income over $200,000 who owe no Federal income tax (after credits) and the deductions, exclusions, or credits used by them to avoid tax.

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TITLE 31, UNITED STATES CODE

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Subtitle I—General

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CHAPTER 3—DEPARTMENT OF THE TREASURY

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Subchapter II—Administrative

§ 321. General authority of the Secretary

(a) * * *

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(d)(1) The Secretary of the Treasury may accept, hold, administer, and use gifts and bequests of property, both real and personal, for the purpose of aiding or facilitating the work of the Department of the Treasury. Gifts and bequests of money and the proceeds from sales of other property received as gifts or bequests shall be deposited in the Treasury in a separate fund and shall be disbursed on

order of the Secretary of the Treasury. Property accepted under this paragraph, and the proceeds thereof, shall be used as nearly as possible in accordance with the terms of the gift or bequest.

(2) For purposes of the Federal income, estate, and gift taxes, property accepted under paragraph (1) shall be considered as a gift or bequest to or for the use of the United States.

(3) The Secretary of the Treasury may invest and reinvest the fund in public debt securities with maturities suitable for the needs of the fund and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities. Income accruing from the securities, and from any other property accepted under paragraph (1), shall be deposited to the credit of the fund, and shall be disbursed on order of the Secretary of the Treasury for purposes as nearly as possible in accordance with the terms of the gifts or bequests.

(4) The Secretary of the Treasury shall, not less frequently than annually, make a public disclosure of the amount (and sources) of the gifts and bequests received under this subsection, and the purposes for which amounts in the separate fund established under this subsection are expended.

§324. Disposing and extending the maturity of obligations

(a) The Secretary of the Treasury may—

(1) dispose of obligations—

(A) acquired by the Secretary for the United States Government; or

(B) delivered by an executive agency; and

(2) make arrangements to extend the maturity of those obligations.

(b) The Secretary may dispose or extend the maturity of obligations under subsection (a) of this section in the way, in amounts, at prices (for cash, obligation, property, or a combination of cash, obligations, or property), and on conditions the Secretary considers advisable and in the public interest. [However, the Secretary may not dispose of obligations on one issuer, held by the Secretary at one time, having on the date of disposal a total face or par value of more than $1,000,000 or, if no-par obligations, a stated or book value of more than $1,000,000.]

(c) The authority under this section is in addition to authority under another law.

* * * * * * *

§ 322. Working capital fund

(a) The Department of the Treasury has a working capital fund. Amounts in the fund are available for expenses of operating and maintaining common administrative services of the Department that the Secretary of the Treasury, with the approval of the Director of the Office of Management and Budget, decides may be carried out more advantageously and more economically as central services. [Amounts in the fund may total not more than $1,000,000 at any time.]

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Subtitle III—Financial Management

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CHAPTER 31—PUBLIC DEBT

Subchapter I—Borrowing Authority

* * * * * * *

§ 3107. Increasing interest rates and investment yields on retirement bonds

With the approval of the President, the Secretary of the Treasury may increase by regulation the interest rate or investment yield on an offering of bonds issued under this chapter that are described in sections 405(b) and 409(a) of the Internal Revenue Code of 1954 (26 U.S.C. 405(b), 409(a)), *as in effect before the enactment of the Tax Law Simplification and Improvement Act of 1983.* The increased yield shall be for interest accrual periods specified in the regulations so that the interest rate or investment yield on the bonds for those periods is consistent with the interest rate or investment yield on a new offering of those bonds.

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TAX EQUITY AND FISCAL RESPONSIBILITY ACT OF 1982

* * * * * * *

TITLE I—PROVISIONS RELATING TO SAVINGS IN HEALTH AND INCOME SECURITY PROGRAMS

Subtitle A—Medicare

PART I—CHANGES IN PAYMENTS FOR SERVICES

Subpart A—Amount of Payment for Institutional Services

* * * * * * *

SINGLE REIMBURSEMENT LIMIT FOR SKILLED NURSING FACILITIES

SEC. 102. (a) Section 1861(v)(1) of the Social Security Act is amended—

(1) in subparagraph (E), by striking out "; except that" and all that follows and inserting in lieu thereof a period;

(2) in subparagraph (E), by striking out "(E)" and inserting in lieu thereof "(ii)"; and

(3) by inserting after subparagraph (D) the following:

"(E)(i) Such regulations shall provide that any determination of reasonable cost with respect to services provided by hospital-based skilled nursing facilities shall be made on the basis of a single standard based on the reasonableness of costs incurred by free standing skilled nursing facilities, subject to such adjustments as the Secretary may deem appropriate.".

(b) The amendment made by subsection (a) shall be effective with respect to cost reporting periods beginning on or after [October 1, 1983.] *April 1, 1984.*

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Subpart B—Payments for Other Services

* * * * * * *

PAYMENTS TO HEALTH MAINTENANCE ORGANIZATIONS AND COMPETITIVE MEDICAL PLANS

SEC. 1414. (a) * * *

* * * * * * *

(c)(1) * * *

* * * * * * *

(2)(A) In the case of an eligible organization which has in effect an existing cost contract (as defined in paragraph (3)(A) on the initial effective date, the organization may receive payment under a new risk sharing contract with respect to a current, nonrisk medicare enrollee (as defined in subparagraph (C)) only to the extent that the organization enrolls, for each such enrollee, two new medicare enrollees (as defined in subparagraph (D)). The selection of those current nonrisk medicare enrollees with respect to whom payment may be so received under a new risk-sharing contract shall be made in a nonbiased manner.

(B) Subparagraph (A) shall not be construed to prevent an eligible organization from providing for enrollment, on a basis described in subsection (a)(6) of section 1876 of the Social Security Act (as amended by this Act, other than under a reasonable cost reimbursement contract), of current, nonrisk medicare enrollees and from providing such enrollees with some or all of the additional benefits described in section 1876(g)(2) of the Social Security Act (as amended by this Act), but (except as provided in subparagraph (A))—

(i) payment to the organization with respect to such enrollees shall only be made in accordance with the terms of a reasonable cost reimbursement contract, and

(ii) no payment may be made under section 1876 of such Act with respect to such enrollees for any such additional benefits. Individuals enrolled with the organization under this subparagraph shall be considered to be individuals enrolled with the organization for the purpose of meeting the requirement of section 1876(g)(2) of the Social Security Act (as amended by this Act).

(C) For purposes of this paragraph, the term "current, nonrisk medicare enrollee" means, with respect to an organization, an individual who on the initial effective date—

(i) is enrolled with that organization under an existing cost contract, and

(ii) is entitled to benefits under part A *and enrolled under part B,* or enrolled in part B, of title XVIII of the Social Security Act.

(D) For purposes of this paragraph, the term "new medicare enrollee" means, with respect to an organization, an individual who—

(i) is enrolled with the organization after the date the organization first enters into a new risk-sharing contract,

(ii) at the time of such enrollment is entitled to benefits under part A, or enrolled in part B, of title XVIII of the Social Security Act, and

(iii) was not enrolled with the organization at the time the individual became entitled to benefits under part A, or to enroll in part B, of such title.

(3) For purposes of this subsection:

(A) The term "existing cost contract" means a contract which is entered into under section 1876 of the Social Security Act, as in effect before the initial effective date, or reimbursement on a reasonable cost basis under section 1833(a)(1)(A) of such Act, and which is not an existing risk-sharing contract or an existing demonstration project.

(B) The term "existing risk-sharing contract" means a contract entered into under section 1876(i)(2)(A) of the Social Security Act, as in effect before the initial effective date.

(C) The term "existing demonstration project" means a demonstration project under section 402(a) of the Social Security Amendments of 1967 or under section 222(a) of the Social Security Amendments of 1972, relating to the provision of services for which payment may be made under title XVIII of the Social Security Act.

(D) The term "new risk-sharing contract" means a contract entered into under section 1876(g) of the Social Security Act, as amended by this Act.

(E) The term "reasonable cost reimbursement contract" means a contract entered into under [section 1833(a)(1) of the Social Security Act or] under section 1876(h) of such Act, as amended by this Act, *or reimbursement on a reasonable cost basis under section 1833(a)(1)(A) of such Act.*

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Subtitle C—Utilization and Quality Control Peer Review

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EFFECTIVE DATE

SEC. 149. The amendments made by this [part] *subtitle* shall, subject to section 150, be effective with respect to contracts entered into or renewed on or after the date of the enactment of this Act.

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TITLE II—REVENUE MEASURES

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Subtitle B—Provisions Primarily Relating to Business

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PART II—LEASING

* * * * * * *

SEC. 210. MOTOR VEHICLE OPERATING LEASES.

(a) IN GENERAL.—In the case of any qualified motor vehicle agreement, the fact that such agreement contains a terminal rental adjustment clause shall not be taken into account in determining whether such agreement is a lease.

(b) DEFINITIONS.—For purposes of this section—

(1) QUALIFIED MOTOR VEHICLE AGREEMENT.—The term "qualified motor vehicle agreement" means any agreement with respect to a motor vehicle (including a trailer)—

(A) which was entered into before—

(i) the enactment of any law, or

(ii) the publication by the Secretary of the Treasury or his delegate of any regulation,

which provides that any agreement with a terminal rental adjustment clause is not a lease,

(B) with respect to which the lessor under the agreement—

(i) is personally liable for the repayment of, or

(ii) has pledged property (but only to the extent of the net fair market value of the lessor's interest in such property), other than property subject to the agreement or property directly or indirectly financed by indebtedness secured by property subject to the agreement, as security for,

all amounts borrowed to finance the acquisition of property subject to the agreement, and

(C) with respect to which the lessee under the agreement, uses the property subject to the agreement in a trade or business or for the production of income.

(2) TERMINAL RENTAL ADJUSTMENT CLAUSE.—The term "terminal rental adjustment clause" means a provision of an agreement which permits or requires the rental price to be adjusted upward or downward by reference to the amount real-

ized by the lessor under the agreement upon sale or other disposition of such property. *Such term also includes a provision of an agreement which requires a lessee who is a dealer in motor vehicles to purchase the motor vehicle for a predetermined price and then resell such vehicle where such provision achieves substantially the same results as a provision described in the preceding sentence.*

(c) EXCEPTION WHERE LESSEE TOOK POSITION ON RETURN THAT HE WAS OWNER.—Subsection (a) shall not apply to any qualified motor vehicle agreement with respect to any motor vehicle if the lessee treated himself as the owner of such motor vehicle on a return of tax imposed by chapter 1 of the Internal Revenue Code of 1954 which was filed before the date of the enactment of this Act.

PART III—FOREIGN TAX

SEC. 211. FOREIGN TAX CREDIT FOR TAXES ON OIL AND GAS INCOME.

(a) * * *

* * * * * * *

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after December 31, 1982.

(2) Retention of old sections 907(b) and 904(f)(4) where taxpayer had separate basket foreign loss.—

(A) IN GENERAL.—If, after applying old sections 907(b) and 904(f)(4) to a taxable year beginning before January 1, 1983, the taxpayer had a separate basket foreign loss, such loss shall not be recaptured from income of a kind not taken into account in computing the amount of such separate basket foreign loss more rapidly than ratably over the 8-year period *(or such shorter period as the taxpayer may select)* beginning with the first taxable year beginning after December 31, 1982.

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SEC. 217. MISCELLANEOUS.

(a) * * *

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(e3) EFFECTIVE DATE.—The amendments made by this section shall apply to obligations issue after the date of the enactment of this Act. *For purposes of applying section 168(f)(8)(D)(v) of the Internal Revenue Code of 1954, the amendments made by subsection (c) shall apply to agreements entered into after the date of the enactment of this Act.*

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PART VI—METHODS OF ACCOUNTING

SEC. 229. MODIFICATION OF REGULATIONS ON THE COMPLETED CONTRACT METHOD OF ACCOUNTING.

(a) IN GENERAL.—* * *

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(c) EFFECTIVE DATES; SPECIAL RULES.—

(c) IN GENERAL.—* * *

* * * * * * *

(4) UNDERPAYMENTS OF ESTIMATED TAX FOR 1982.—To the extent provided in regulations, no addition to tax shall be made under section 6654 or 6655 of the Internal Revenue Code of 1954 for the taxpayer's first taxable year ending after December 31, 1982, by reason of a long-term contract, but only with respect to installments required to be paid before April 13, 1983.

Subtitle C—Pensions

PART I—CONTRIBUTION AND LOAN LIMITS

SEC. 235. LOWER CONTRIBUTION AND BENEFIT LIMITS FOR CERTAIN ANNUITIES, ETC.

(a) LIMIT ON ANNUAL DEFINED BENEFIT LOWERED FROM $136,425 TO $90,000; LIMIT ON ANNUAL DEFINED CONTRIBUTION LOWERED FROM $45,475 TO $30,000.—* * *

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(g) EFFECTIVE DATES.—

(1) IN GENERAL.—* * *

* * * * * * *

(3) TRANSITION RULE WHERE THE SUM OF DEFINED CONTRIBUTION AND DEFINED BENEFIT PLAN FRACTIONS EXCEEDS 1.0.—In the case of a plan which satisfied the requirements of section 415 of the Internal Revenue Code of 1954 for the last year beginning before January 1, 1983, the Secretary of the Treasury or his delegate shall prescribe regulations under which an amount is subtracted from the numerator of the defined contribution plan fraction (not exceeding such numerator) so that the sum of the defined benefit plan fraction and the defined contribution plan fraction computed under section 415(e)(1) of the Internal Revenue Code of 1954 (as amended by the Tax Equity and Fiscal Responsibility Act of 1982) does not exceed 1.0 for such year. *A similar rule shall apply with respect to the last plan year beginning before January 1, 1984, for purposes of applying section 416(h) of the Internal Revenue Code of 1954.*

(4) RIGHT TO HIGHER ACCRUED DEFINED BENEFIT PRESERVED.—

(A) IN GENERAL.—In the case of an individual who is a participant before January 1, 1983, in a defined benefit plan which is in existence on July 1, 1982, and with respect to which the requirements of section 415 of such Code have been met for all years, if such individual's current accrued benefit under such plan exceeds the limitation of subsection (b) of section 415 of the Internal Revenue Code of 1954 (as amended by this section), then (in the case of such plan) for purposes of subsections (b) and (e) of such section, the limitation of such subsection (b) with respect to such individual shall be equal to such current accrued benefit.

(B) CURRENT ACCRUED BENEFIT DEFINED.—

(i) IN GENERAL.—For purposes of this paragraph, the term "current accrued benefit" means the individual's accrued benefit (at the close of the last year beginning before January 1, 1983) when expressed as an annual benefit (within the meaning of section 415(b)(2) of such Code as in effect before the amendments made by this Act). *In the case of any plan described in the first sentence of paragraph (5), the preceding sentence shall be applied by substituting for "January 1, 1983" the applicable date determined under paragraph (5).*

(ii) SPECIAL RULE.—For purposes of determining the amount of any individual's current accrued benefit—

(I) no change in the terms and conditions of the plan after July 1, 1982, and

(II) no cost-of-living adjustment occurring after July 1, 1982,

shall be taken into account. *For purposes of subclause (I), any change in the terms and conditions of the plan pursuant to a collective bargaining agreement entered into before July 1, 1982, and ratified before September 3, 1982, shall be treated as a change made before July 1, 1982.*

(5) SPECIAL RULE FOR COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained on the date of the enactment of this Act pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers, the amendments made by this section and section [253] *242* (relating to age 70½) shall not apply to years beginning before the earlier of—

(A) the date on which the last of the collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act), or

(B) January 1, 1986.

For purposes of subparagraph (A), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this section and section [253] *242* shall not be treated as a termination of such collective bargaining agreement. *In the case of any plan described in the first sentence of this paragraph, paragraphs (2) and (3) of section 242(b) shall be applied by substituting for "January 1, 1984" the applicable date determined under this paragraph.*

SEC. 236. LOANS TREATED AS DISTRIBUTIONS.

(a) GENERAL RULE.—* * *

* * * * * * *

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—* * *

(2) EXCEPTION FOR CERTAIN LOANS USED TO REPAY OUTSTANDING OBLIGATIONS.—

(A) IN GENERAL.—Any qualified refunding loan shall not be treated as a distribution by reason of the amendments made by this section to the extent such loan is repaid before August 14, 1983.

(B) QUALIFIED REFUNDING LOAN.—For purposes of subparagraph (A), the term "qualified refunding loan" means any loan made after August 13, 1982, and before August 14, 1983, to the extent such loan is used to make a required principal payment.

(C) REQUIRED PRINCIPAL PAYMENT.—For purposes of subparagraph (B), the term "required principal payment" means any principal repayment on a loan made under the plan which was outstanding on August 13, 1982, if such repayment is required to be made after August 13, 1982, and before August 14, 1983 *or if such loan was payable on demand.*

* * * * * * *

PART III—OTHER REQUIREMENTS

SEC. 242. REQUIRED DISTRIBUTIONS FOR QUALIFIED PLANS.

(a) GENERAL RULE.—Paragraph (9) of section 401(a) (relating to requirements for qualification) is amended to read as follows:

"(9) REQUIRED DISTRIBUTIONS.—

"(A) BEFORE DEATH.—A trust forming part of a plan shall not constitute a qualified trust under this section unless the plan provides that the entire interest of each employee—

"(i) either will be distributed to him not later than his taxable year in which he attains age 70½ or, in the case of an employee other than a key employee who is a participant in a top-heavy plan, in which he retires, whichever is the later, or

"(ii) will be distributed, commencing not later than such taxable year—

"(I) in accordance with regulations prescribed by the Secretary, over the life of such employee or over the lives of such employee and his spouse, or

"(II) in accordance with such regulations, over a period not extending beyond the life expectancy of such employee or the life expectancy of such employee and his spouse.

"(B) AFTER DEATH.—A trust forming part of a plan shall not constitute a qualified trust under this section unless the plan provides that if—

"(i) an employee dies before his entire interest has been distributed to him, or

"(ii) an employee has been commenced in accordance with subparagraph (A)(ii) to his surviving spouse and such surviving spouse dies before his entire interest has been distributed to such surviving spouse,

his entire interest (or the remaining part of such interest if distribution thereof has commenced) will be distributed within 5 years after his death (or the death of his surviving spouse). The preceding sentence shall not apply if the distribution of the interest of the employee has commenced and such distribution is for a term certain over a period permitted under subparagraph (A)(ii)(II)."

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by subsection (a) shall apply to plan years beginning after December 31, 1983.

(2) TRANSITION RULE.—A trust forming part of a plan shall not be disqualified under paragraph (9) of section 401(a) of the Internal Revenue Code of 1954, as amended by subsection (a), by reason of distributions under a designation (before [January 1, 1984] *the first day of the first plan year beginning on or after January 1 1984*) by any employee of a method of distribution—

(A) which does not meet the requirements of such paragraph (9), but

(B) which would not have disqualified such trust under [paragraph (9) of] section 401(a) of the such Code as in effect before the amendment made by subsection (a).

(3) TREATMENT OF CERTAIN DEFAULT OPTIONS.—For purposes of paragraph (2), if—

(A) a plan permits an employee to designate a method of distribution but provides that in the absence of such a designation a specified method of distribution will apply, and

(B) as of the first day of the first plan year beginning on or after January 1, 1984, such specified method of distribution applied to an individual by reason of his failure to make a designation which was available to him before such first day,

such specified method of distribution shall be treated as pursuant to a designation made by the employee before the first day of such plan year.

(4) SPECIAL RULE FOR GOVERNMENT PLANS.—In the case of a government plan (as defined in section 219(e)(4) of the Internal Revenue Code of 1954)—

(A) paragraph (1) shall be applied by substituting "December 31, 1985" for "December 31, 1983", and

(B) paragraphs (2) and (3) shall be applied by substituting "January 1, 1986" for "January 1, 1984".

SEC. 243. REQUIRED DISTRIBUTIONS IN CASE OF INDIVIDUAL RETIREMENT PLANS.

(a) REQUIRED DISTRIBUTIONS AFTER DEATH.—* * *

* * * * * * *

[(c) EFFECTIVE DATES.—

[(1) SUBSECTION (a).—The amendments made by subsection (a) shall apply in the case of individuals dying after December 31, 1983.

[(2) SUBSECTION (b).—The amendments made by subsection (b) shall apply to taxable years beginning after December 31, 1983.]

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to individuals dying after December 31, 1983.

* * * * * * *

SEC. 247. EXISTING PERSONAL SERVICE CORPORATIONS MAY LIQUIDATE UNDER SECTION 333 DURING 1983 OR 1984.

(a) IN GENERAL.—In the case of a complete liquidation of a personal service corporation (within the meaning of section 535(c)(2)(B) of the Internal Revenue Code of 1954) *which is in existence on September 3, 1982,* during 1983 or 1984, the following rules shall apply with respect to any shareholder other than a corporation:

(1) The determination of whether section 333 of such Code applies shall be made without regard to whether the corporation is a collapsible corporation to which section 341(a) of such Code applies.

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TITLE III—TAXPAYER COMPLIANCE

* * * * * * *

Subtitle G—Modification of Interest Provisions

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SEC. 345. DETERMINATION OF RATE OF INTEREST TO BE MADE SEMIANNUALLY.

(a) IN GENERAL.—Subsection (b) of section 6621 (relating to determination of rate of interest) is amended to read as follows:

"(b) ADJUSTMENT OF INTEREST RATE.—

"(1) ESTABLISHMENT OF ADJUSTED RATE.—If the adjusted prime rate charged by banks (rounded to the nearest full percent)—

"(A) during the 6-month period ending on September 30 of any calendar year, or

"(B) during the 6-month period ending on March 31 of any calendar year,

differs from the interest rate in effect under this section on either such date, respectively, then the Secretary shall establish, within 15 days after the close of the applicable 6-month period, an adjusted rate of interest equal to such adjusted prime rate.

"(2) EFFECTIVE DATE OF ADJUSTMENT.—Any adjusted rate of interest established under paragraph (1) shall become effective—

"(A) on January 1 of the succeeding year in the case of an adjustment attributable to paragraph (1)(A), and

"(B) on July 1 of the same year in the case of an adjustment attributable to paragraph (1)(B)."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to adjustments taking effect on *or after* July 1, 1983.

* * * * * * *

Section 6 of the Subchapter S Revision Act of 1982

SEC. 6. EFFECTIVE DATES.

(a) IN GENERAL.—Except as otherwise provided in this section, the amendments made by this Act shall apply to taxable years beginning after December 31, 1982.

(b) TRANSITIONAL RULES.—

(1) SECTIONS 1379 AND 62(9) CONTINUE TO APPLY FOR 1983.—Sections 1379 and 62(9) of the Internal Rveneue Code of 1954 (as in effect before the date of the enactment of this Act) shall remain in effect for years beginning before January 1, 1984.

(2) ALLOWANCE OF EXCLUSION OF DEATH BENEFIT.—Notwithstanding section 241(b) of the Tax Equity and Fiscal Responsibility Act of 1982, in the case of amounts received under a plan of an S corporation, the amendment made by section 239 of such Act shall apply with respect to decedents dying after December 31, 1982.

(3) NEW PASSIVE INCOME RULES APPLY TO TAXABLE YEARS BEGINNING DURING 1982.—In the case of a taxable year beginning during 1982—

(A) sections 1362(d)(3), 1366(f)(3), and 1375 of the Internal Revenue Code of 1954 (as amended by this Act) shall apply, and

(B) section 1372(e)(5) of such code (as in effect on the day before the enactment of this Act) shall not apply.

The preceding sentence shall not apply in the case of any corporation which elects (at such time and in such manner as the Secretary of the Treasury or his delegate shall prescribes) to have such sentence not apply. Subsection (e) shall not apply to any termination resulting from an election under the preceding sentence.

* * * * * * *

(e) TREATMENT OF CERTAIN ELECTIONS UNDER PRIOR LAW.—For purposes of section 1362(g) of the Internal Revenue Code of 1954, as amended by this Act (relating to no election permitted within 5 years after termination of prior election), any termination *or revocation* under section 1372(e) of such Code (as in effect on the day before the date of the enactment of this Act) shall not be taken into account.

HIGHWAY REVENUE ACT OF 1982

Subtitle B—Tax changes

* * * * * * *

SEC. 513. HEAVY TRUCK USE TAX.

(a) Increase in Rate of Tax.—* * *

* * * * * * *

(c) [Clarification of Trailers Customarily Used in Connection with Highway Motor Vehicles.—

(1) Subsection (c) of section 4482 is amended by adding at the end thereof the following new paragraph:

"(5) Customary use.—A semitrailer or trailer shall be treated as customarily used in connection with a highway motor vehicle if such vehicle is equipped to tow such semitrailer or trailer."

(2) The heading for subsection (c) of section 4482 is amended by inserting "and Special Rule" after "Definitions".

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Subtitle C—Floor Stock Provisions

SEC. 521. FLOOR STOCKS TAXES.

(a) 1983 Tax on Gasoline.—On gasoline subject to tax under section 4081 which, on April 1, 1983, is held by a dealer for sale, there is hereby imposed a floor stocks tax at the rate of 5 cents a gallon *(4 cents a gallon in the case of a gallon of gasohol, as defined in section 4081(c)).*

(b) 1984 Tax on Tires.—On any article which would be subject to tax under section 4071(a) if sold by the manufacturer, producer, or importer on or after January 1, 1984, which on January 1, 1984, is held by a dealer and has not been used and is intended for sale, there shall be imposed a floor stocks tax equal to the excess of the amount of tax which would be imposed on such article if it were sold by the manufacturer, producer, or importer after January 1, 1984, over the amount of tax imposed under section 4071(a) on the sale of such article by the manufacturer, producer, or importer.

(c) *Overpayment of Floor Stocks Taxes.*—Section 6416 shall apply in respect of the floor stocks taxes imposed by this section, so as to entitle, subject to all provisions of section 6416, any person paying such floor stocks taxes to a credit or refund thereof for any of the reasons specified in section 6416. *All other provisions of law, including penalties, applicable with respect to the taxes imposed by section 4081 or 4071(a) (whichever is appropriate) shall apply to the floor stocks taxes imposed by this section.*

* * * * * * *

SEC. 523. DEFINITIONS AND SPECIAL RULE.

(a) In General.—For purposes of this subtitle—

(1) The term "dealer" includes a wholesaler, jobber, distributor, or retailer.

(2) An article shall be considered as "held by a dealer" if title thereto has passed to such dealer (whether or not delivery to him has been made) and if for purposes of consumption title to such article or possession thereof has not at any time been transferred to any person other than a dealer.

(3) The term "tax-repealed article" means any article on which a tax was imposed by section 4061(a), 4061(b), or section 4091 as in effect on the day before the date of the enactment of this Act, and which will not be subject to tax under section 4061(a), 4961(b), or 4091 as in effect on the day after the date of the enactment of this Act.

(4) Except as otherwise expressly provided herein, any reference in this subtitle to a section or other provision shall be treated as a reference to a section or other provision of the Internal Revenue Code of 1954.

(b) 1984 EXTENSION OF FLOOR STOCKS REFUND TO TIRES.—

(1) IN GENERAL.—In the case of an article on which a tax was imposed by section 4071(a) as in effect on December 31, 1983, and which will not be subject to tax under such section (or *will be subject to a lower rate of tax under such section)* as in effect on January 1, 1984, such article shall be treated as a tax repealed article for purposes of subsection (a) of section 522. *Any tread rubber which was subject to tax under section 4071(a)(4) as in effect on December 31, 1983, and which on January 1, 1984, is part of a retread tire which is held by a dealer and has not been used and is intended for sale shall be treated as a tax-repealed article for purposes of subsection (a) of section 522.*

(2) ALLOWANCE OF REFUND.—In the case of a tax-repealed article to which paragraph (1) applies, subsection (a) of section 522 shall be applied—

(A) by treating January 1, 1984, as the day after the date of the enactment of this Act, and

(B) by substituting "1984" for "1983" each place it appears in paragraph (1) of such subsection (a).

In the case of any tire which is a tax repealed article solely by reason of the parenthetical matter in paragraph (1), the amount of the credit or refund under subsection (a) shall not exceed the excess of the tax imposed with respect to such tire by section 4071(a) as in effect on December 31, 1983, over the tax which would have been imposed with respect to such tire by section 4071(a) on January 1, 1984.

TECHNICAL CORRECTIONS ACT OF 1982

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TITLE I—AMENDMENTS RELATED TO ECONOMIC RECOVERY TAX ACT OF 1981

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SEC. 105. AMENDMENTS RELATED TO TITLE V OF THE ACT.

(a) AMENDMENTS RELATED TO SECTION 501.—* * *

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(c) AMENDMENTS RELATED TO SECTION 503.—

(1) * * *

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(5) Foreign currency and cash settlement contracts marked to market.—

(A) Cash settlement contracts.—Subsection (b) of section 1256 (defining regulated futures contract) is amended by striking out paragraph (1) and by redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively.

(B) Foreign currency contracts.—Subsection (b) of section 1256 (as amended by subparagraph (A)) is amended by adding at the end thereof the following new sentence: "Such term includes any foreign currency contract."

(C) Foreign currency contract defined.—Section 1256 is amended by adding at the end thereof the following new subsection:

"(g) Foreign Currency Contract Defined.—

"(1) Foreign currency contract.—For purposes of this section, the term 'foreign currency' means a contract—

"(A) which requires delivery of a foreign currency wich is a currency in which positions are also traded through regulated futures contracts,

"(B) which is traded in the interbank market, and

"(C) which is entered into at arm's length at a price determined by reference to the price in the interbank market.

"(2) Regulations.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of paragraph (1), including regulations excluding from the application of paragraph (1) any contract (or type of contract) if its application thereto would be inconsistent with such purposes."

(D) Effective dates.—

(i) In general.—Except as provided in clauses **[**(ii) and (iii)**]** *(ii), (iii), and (iv)* the amendments made by subparagraphs (B) and (C) shall apply only with respect to contracts entered into after May 11, 1982.

(ii) Election by taxpayer of retroactive application.—

(I) Retroactive application.—If the taxpayer so elects, the amendments made by subparagraphs (B) and (C) shall apply as if included within the amendments made by title V of the Economic Recovery Tax Act of 1981.

(II) Additional choices with respect to 1981.—If the taxpayer held a foreign currency contract after December 31, 1980, and before June 24, 1981, and such taxpayer makes an election under subclause (I), such taxpayer may revoke any election made under section 508(c) or 509(a) of such Act, and may make an election under section 508(c) or 509(a) of such Act.

(III) Additional choices apply to all regulated futures contracts.—Except as provided in subclause (IV), in the case of any taxpayer who makes an election under subclause (I), any election under section 508(c) or 509(a) of such Act or any revocation of such an election shall apply to all regulated futures contracts (including foreign currency contracts).

(IV) SECTION 509(A) (3) AND (4) NOT TO APPLY TO FOREIGN CURRENCY CONTRACTS.—Paragraphs (3) and (4) of section 509(a) of such Act shall not apply to any foreign currency contract.

(V) TIME FOR MAKING ELECTION OR REVOCATION.—Any election under subclause (I) and any election or revocation under subclause (II) may be made only within the 90-day period beginning on the date of the enactment of this Act. Any such action, once taken, shall be irrevocable.

(VI) DEFINITIONS.—For purposes of this clause, the terms "regulated futures contract" and "foreign currency contract" have the same respective meanings as when used in section 1256 of the Internal Revenue Code of 1954 (as amended by this Act).

(iii) ELECTION BY TAXPAYER WITH RESPECT TO POSITIONS HELD DURING TAXABLE YEARS ENDING AFTER MAY 11, 1982.—In lieu of the election under clause (ii), a taxpayer may elect to have the amendments made by subparagraphs (B) and (C) applied to all positions held in taxable years ending after May 11, 1982, except that the provisions of section 509(a) (3) and (4) of the Economic Recovery Tax Act of 1981 shall not apply.

(iv) ELECTION BY TAXPAYER WITH RESPECT TO CONTRACTS ENTERED INTO AFTER JANUARY 12, 1983.—In lieu of the elections under clauses (ii) and (iii), a taxpayer may elect to have the amendments made by subparagraphs (B) and (C) apply only with respect to contracts entered into after January 12, 1983.

SEC. 306. TECHNICAL AMENDMENTS TO THE REVENUE PROVISIONS OF THE TAX EQUITY AND FISCAL RESPONSIBILITY ACT OF 1982.

(a) AMENDMENTS RELATED TO TITLE II.—

(1) AMENDMENTS RELATED TO SECTION 201.— * * *

* * * * * * *

(8) AMENDMENTS RELATED TO SECTION 224.—

(A)(i) Subsection (h) of section 338 (relating to definitions and special rules) is amended by adding at the end thereof the following new paragraphs:

"(8) TARGET NOT TREATED AS A MEMBER OF AFFILIATED GROUP.—Except as otherwise provided in paragraph (9) or in regulations prescribed under this paragraph, the target corporation shall not be treated as member of an affiliated group with respect to the sale described in subsection (a)(1).

"(9) ELECTIVE RECOGNITION OF GAIN OR LOSS BY TARGET CORPORATION, TOGETHER WITH NONRECOGNITION OF GAIN OR LOSS ON STOCK SOLD BY SELLING CONSOLIDATED GROUP.—

"(A) IN GENERAL.—Under regulations prescribed by the Secretary, an election may be made under which if—

"(i) the target corporation was, before the transaction, a member of the selling consolidated group, and

"(ii) the target corporation recognizes gain or loss with respect to the transaction as if it sold all of its assets in a single transaction,

then the target corporation shall be treated as a member of the selling consolidated group with respect to such sale, and (to the extent provided in regulations) no gain or loss will be recognized on stock sold or exchanged in the transaction by members of the selling consolidated group.

"(B) SELLING CONSOLIDATED GROUP.—For purposes of subparagraph (A), the term 'selling consolidated group' means any group of corporations which (for the taxable period which includes the transaction)—

"(i) includes the target corporation, and

"(ii) files a consolidated return."

(ii) If—

(I) any portion of a qualified stock purchase is pursuant to a binding contract entered into on or after [the date of the enactment of the Tax Equity and Fiscal Responsibility Act of 1982,] *September 1, 1982,* and on or before the date of the enactment of this Act, and

(II) the purchasing corporation establishes by clear and convincing evidence that such contract was negotiated on the contemplation that, with respect to the deemed sale under section 338 of the Internal Revenue Code of 1954, the target corporation would be treated as a member of the affiliated group which includes the selling corporation,

then the amendment made by clause (i) shall not apply to such qualified stock purchase.

* * * * * * *

SECTION 101 OF THE TAX REFORM ACT OF 1969

SEC. 101. PRIVATE FOUNDATIONS.

(a) IN GENERAL.—* * *

* * * * * * *

(l) SAVINGS PROVISIONS.—

(1) REFERENCES TO INTERNAL REVENUE CODE PROVISIONS.— * * *

* * * * * * *

(4) SECTION 4943.—

(A) In the case of a private foundation—

(i) which was incorporated before January 1, 1951;

(ii) substantially all of the assets of which on May 26, 1969, consist of more than 90 percent of the stock of an incorporated business enterprise which is licensed and regulated, the sales or contracts of which are regulated, and the professional representatives of which are licensed, by State regulatory agencies in at least 10 States; and

(iii) which acquired such stock solely by gift, devise, or bequest,

section 4943(c)(4)(A)(i) shall be applied with respect to the holdings of such foundation in such incorporated business enterprise [by substituting "51 percent" for "50 percent"] *as if it did not contain the phrase, "but in no event shall the percentage so substituted be more than 50 percent"*, and section 4943(c)(4)(D) shall not apply with respect to such holdings. For purposes of the proceeding sentence, stock of such enterprise in a trust created before May 27, 1969, of which the foundation is the remainder beneficiary shall be deemed to be held by such foundation on May 26, 1969, if such foundation held (without regard to such trust) more than 20 percent of the stock of such enterprise on May 26, 1969.

(B) Subparagraph (A) shall apply to a private foundation only if—

(i) the foundation does not purchase any stock or other interest in the enterprise described in subparagraph (A) after May 26, 1969, and does not acquire any stock or other interest in any other business enterprise which constitutes excess business holdings under section 4943; and

(ii) in the last 5 taxable years ending on or before December 31, 1970, the foundation expends substantially all of its adjusted net income (as defined in section 4942(f)) for the purpose or function for which it is organized and operated.

(C) For purposes of section 4943(c)(6), the term "purchase" does not include an exchange which is described in paragraph (2)(B) of this subsection and which is pursuant to a plan for disposition of excess business holdings.

* * * * * * *

PUBLIC LAW 96-249

AN ACT To amend the Food Stamp Act of 1977 to improve food stamp program fiscal accountability through reductions in inaccurate eligibility and benefit determinations; to improve the system of deductions; to increase the specific dollar limitations on appropriations for the fiscal years 1980 and 1981 food stamp programs; and for other purposes.

* * * * * * *

TITLE I—REDUCTION IN FOOD STAMP ERROR AND FRAUD AND REVISION OF DEDUCTIONS

* * * * * * *

DISCLOSURE PROVISIONS

SEC. 127. (a)(1) Subsection [(i)] *(l)* of section 6103 of the Internal Revenue Code of 1954 (relating to disclosure of returns and return information for purposes other than tax administration) is amended by adding at the end thereof the following new paragraph:

"(7) DISCLOSURE OF CERTAIN RETURN INFORMATION BY SOCIAL SECURITY ADMINISTRATION TO DEPARTMENT OF AGRICULTURE AND TO STATE FOOD STAMP AGENCIES.—

"(A) IN GENERAL.—The Commissioner of Social Security may disclose return information from returns with respect to net earnings from self-employment (as defined in section 1402), wages (as defined in section 3121(a) or 3401(a)), and payments of retirement income which have been disclosed to the Social Security Administration as provided by paragraph (1) or (5) of this subsection—

"(i) upon request, to officers and employees of the Department of Agriculture, and

"(ii) upon written request, to officers and employees of a State food stamp agency.

"(B) RESTRICTION ON DISCLOSURE.—The Commissioner of Social Security shall disclose return information under subparagraph (A) only for purposes of, and to the extent necessary in, determining an individual's eligibility for benefits, or the amounts of benefits, under the food stamp program established under the Food Stamp Act of 1977.

"(C) STATE FOOD STAMP AGENCY.—For purposes of this paragraph, the term 'State food stamp agency' means any agency described in section 3(n)(1) of the Food Stamp Act of 1977, which administers the food stamp program established under such Act.".

* * * * * * *

SOCIAL SECURITY ACT

* * * * * * *

TITLE II—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE BENEFITS

* * * * * * *

FEDERAL OLD-AGE AND SURVIVORS INSURANCE TRUST FUND AND FEDERAL DISABILITY INSURANCE TRUST FUND

SEC. 201. (a) There is hereby created on the books of the Treasury of the United States a trust fund to be known as the "Federal Old-Age and Survivors Insurance Trust Fund". The Federal Old-Age and Survivors Insurance Trust Fund shall consist of the securities held by the Secretary of the Treasury for the Old-Age Reserve Account and the amount standing to the credit of the Old-Age Reserve Account on the books of the Treasury on January 1, 1940, which securities and amount the Secretary of the Treasury is authorized and directed to transfer to the Federal Old-Age and Survivors Insurance Trust Fund, and, in addition, such gifts and bequests as may be made as provided in subsection (i)(1), and such amounts as may be appropriated to, or deposited in, the Federal Old-Age and Survivors Insurance Trust Fund as hereinafter provided. There is hereby appropirated to the Federal Old-Age and Survivors Insurance Trust Fund for the fiscal year ending June 30, 1941, and for each fiscal year thereafter, out of any moneys in the Treasury not otherwise appropriated, amounts equivalent to 100 per centum of—

(1) * * *

* * * * * * *

(3) the taxes imposed by subchapter A of chapter 9 of such Code with respect to wages (as defined in section 1426 of such Code), and by chapter 21 (other than sections 3101(b) and 3111(b)) of the Internal Revenue Code of 1954 with respect to wages (as defined in section 3121 of such Code) reported to the Commissioner of Internal Revenue pursuant to section 1420(c) of the Internal Revenue Code of 1939 after December 31, 1950, or to the Secretary of the Treasury or his delegates pursuant to subtitle F of the Internal Revenue Code of 1954 after December 31, 1954, as determined by the Secretary of the Treasury by applying the applicable rates of tax under such subchapter or chapter 21 (other than sections 3101(b) and 3111(b)) to such wages, which wages shall be certified by the Secretary of [Health, Education, and Welfare] *Health and Human Services* on the basis of the records of wages established and maintained by such Secretary in accordance with such reports, less the amounts specified in clause (1) of subsection (b) of this section; and

(4) the taxes imposed by subchapter E of chapter 1 of the Internal Revenue Code of 1939, with respect to self-employment income (as defined in section 481 of such Code), and by chapter 2 (other than section 1401(b)) of the Internal Revenue Code of 1954 with respect to self-employment income (as defined in section 1402 of such Code) reported to the Commissioner of Internal Revenue on tax returns under such subchapter or to the Secretary of the Treasury or his delegate on tax returns under subtitle F of such Code, as determined by the Secretary of the Treasury by applying the applicable rate of tax under such subchapter or chapter (other than section 1401(b)) to such self-employment income, which self-employment income shall be certified by the Secretary of [Health, Education, and Welfare] *Health and Human Services* on the basis of the records of self-employment income established and maintained by the Secretary of [Health, Education, and Welfare] *Health and Human Services* in accordance with such returns, less the amounts specified in clause (2) of subsection (b) of this section.

* * * * * * *

(b) There is hereby created on the books of the Treasury of the United States a trust fund to be known as the "Federal Disability Insurance Trust Fund". The Federal Disability Insurance Trust

Fund shall consist of such gifts and bequests as may be made as provided in subsection (i)(1), and such amounts as may be appropriated to, or deposited in, such fund as provided in this section. There is hereby appropriated to the Federal Disability Insurance Trust Fund for the fiscal year ending June 30, 1957, and for each fiscal year thereafter, out of any moneys in the Treasury not otherwise appropriated, amounts equivalent to 100 per centum of—

(1)(A) ½ of 1 per centum of the wages (as defined in section 3121 of the Internal Revenue Code of 1954) paid after December 31, 1956, and before January 1, 1966, and reported to the Secretary of the Treasury or his delegate pursuant to subtitle F of the Internal Revenue Code of 1954, (B) 0.70 of 1 per centum of the wages (as so defined) paid after December 31, 1965, and before January 1, 1968, and so reported, (C) 0.95 of 1 per centum of the wages (as so defined) paid after December 31, 1967, and before January 1, 1970, and so reported, (D) 1.10 per centum of the wages (as so defined) paid after December 31, 1969, and before January 1, 1973, and so reported, (E) 1.1 per centum of the wages (as so defined) paid after December 31, 1972, and before January 1, 1974, and so reported, (F) 1.15 per centum of the wages (as so defined) paid after December 31, 1973, and before January 1, 1978, and so reported, (G) 1.55 per centum of the wages (as so defined) paid after December 31, 1977, and before January 1, 1979, and so reported, (H) 1.50 per centum of the wages (as so defined) paid after December 31, 1978, and before January 1, 1980, and so reported, (I) 1.12 per centum of the wages (as so defined) paid after December 31, 1979, and before January 1, 1981, and so reported, (J) 1.30 per centum of the wages (as so defined) paid after December 31, 1980, and before January 1, 1982, and so reported, (K) 1.65 per centum of the wages (as so defined) paid after December 31, 1981, and before January 1, 1983, and so reported, (L) 1.25 per centum of the wages (as so defined) paid after December 31, 1982, and before January 1, 1984, and so reported, (M) 1.00 per centum of the wages (as so defined) paid after December 31, 1983, and before January 1, 1988, and so reported, (N) 1.06 per centum of the wages (as so defined) paid after December 31, 1987, and before January 1, 1990, and so reported, (O) 1.20 per centum of the wages (as so defined) paid after December 31, 1989, and before January 1, 2000, and so reported, and (P) 1.42 per centum of the wages (as so defined) paid after December 31, 1999, and so reported, which wages shall be certified by the Secretary of [Health, Education, and Welfare] *Health and Human Services* on the basis of the records of wages established and maintained by such Secretary in accordance with such reports; and

(2)(A) ⅜ of 1 per centum of the amount of self-employment income (as defined in section 1402 of the Internal Revenue Code of 1954) reported to the Secretary of the Treasury or his delegate on tax returns under subtitle F of the Internal Revenue Code of 1954 for any taxable year beginning after December 31, 1956, and before January 1, 1966, (B) 0.525 of 1 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1965, and before January 1, 1968, (C) 0.7125 of 1 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1967, and before January 1, 1970, (D) 0.825 of 1 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1969, and before January 31, 1973, (E) 0.795 of 1 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1972, and before January 1, 1974, (F) 0.815 of 1 per centum of the amount of self-employment income (as so defined) as reported for any taxable year beginning after December 31, 1973, and before January 1, 1978 (G) 1.090 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1977, and before January 1, 1979, (H) 1.0400 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1978, and before January 1, 1980, (I) 0.7775 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1979, and before January 1, 1981, (J) 0.9750 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1980, and before January 1, 1982, (K) 1.2375 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1981 and before January 1, 1983, (L) 0.9375 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1982, and before January 1, 1984 (M) 1.00 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1983, and before January 1, 1988 (N) 1.06 per centum of the self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1987, and before January 1, 1990 (O) 1.20 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1989 and before January 1, 2000, and (P) 1.42 per centum of the self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1999, which self-employment income shall be certified by the Secretary of **[**Health, Education, and Welfare**]** *Health and Human Services* on the basis of the records of self-employment income established and maintained by the Secretary of **[**Health, Education, and Welfare**]** *Health and Human Services* in accordance with such returns.

(d) It shall be the duty of the Managing Trustee to invest such portion of the Trust Funds as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original issue at the issue price, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the

United States may be issued under [the Second Liberty Bond Act, as amended,] *chapter 31 of title 31, United States Code,* are hereby extended to authorize the issuance at par of public-debt [Obligation] *obligations* for purchase by the Trust Funds. Such obligations issued for purchase by the Trust Funds shall have maturities fixed with due regard for the needs of the Trust Funds and shall bear interest at a rate equal to the average market yield (computed by the managing Trustee on the basis of market quotations as of the end of the calendar month next preceding the date of such issue) on all marketable interest-bearing obligations of the United States then forming a part of the public debt which are not due or callable until after the expiration of four years from the end of such calendar month; except that where such average market yield is not a multiple of one-eight of 1 per centum, the rate of interest of such obligations shall be the multiple of one-eight of 1 per centum nearest such market yield. The Managing Trustee may purchase other interest-bearing obligations of the United States or obligations guaranteed as to both principal and interest by the United States, on original issue or at the market price, only where he determines that the purchase of such other obligations is in the public interest.

* * * * * * *

(g) (1)(A) The Managing Trustee of the Trust Funds (which for purposes of this paragraph shall include also the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund established by title XVIII) is directed to pay from the Trust Funds into the Treasury—

(i) the amounts estimated by him and the Secretary of [Health, Education, and Welfare] *Health and Human Services* which will be expended, out of moneys appropriated from the general fund in the Treasury, during a three-month period by the Department of [Health, Education, and Welfare] *Health and Human Services* and the Treasury Department for the administration of titles II, XVI, and XVIII of this Act and subchapter E of chapter 1 and subchapter A of chapter 9 of the Internal Revenue Code of 1939, and chapters 2 and 21 of the Internal Revenue Code of 1954, less

(ii) the amounts estimated (pursuant to the method prescribed by the Board of Trustees under paragraph (4) of this subsection) by the Secretary of [Health, Education, and Welfare] *Health and Human Services* which will be expended, out of moneys made available for expenditures from the Trust Funds, during such three-month period to cover the cost of carrying out the functions of the Department of [Health, Education, and Welfare], *Health and Human Services* specified in section 232, which relate to the administration of provisions of the Internal Revenue Code of 1954 other than those referred to in clause (i).

Such payments shall be carried into the Treasury as the net amount of repayments due the general fund account for reimbursement of expenses incurred in connection with the administration of titles II, XVI, and XVIII of this Act and subchapter E of chapter 1 and subchapter A of chapter 9 of the Internal Revenue Code of

1939, and chapters 2 and 21 of the Internal Revenue Code of 1954. A final accounting of such payments for any fiscal year shall be made at the earliest practicable date after the close thereof. There are hereby authorized to be made available for expenditure, out of any or all of the Trust Funds, such amounts as the Congress may deem appropriate to pay the costs of the part of the administration of this title, title XVI, and title XVIII for which the Secretary of [Health, Education, and Welfare], *Health and Human Services* is responsible and of carrying out the functions of the Department of [Health, Education, and Welfare], *Health and Human Services* specified in section 232, which relate to the administration of provisions of the Internal Revenue Code of 1954 other than those referred to in clause (i) of the first sentence of this subparagraph.

(B) After the close of each fiscal year the Secretary of [Health, Education, and Welfare] *Health and Human Services,* shall determine the portion of the costs, incurred during such fiscal year, of administration of this title, title XVI, and title XVIII and of carrying out the functions of the Department of [Health, Education, and Welfare] *Health and Human Services,* specified in section 232, which relate to the administration of provisions of the Internal Revenue Code of 1954 (other than those referred to in [clauses] *clause* (i) of the first sentence of subparagraph (A)), which should have been borne by the general fund in the Treasury and the portion of such costs which should have been borne by each of the Trust Funds; except that the determination of the amounts to be borne by the general fund in the Treasury with respect to expenditures incurred in carrying out such functions specified in section 232 shall be made pursuant to the method prescribed by the Board of Trustees under paragraph (4) of this subsection. After such determination has been made, the Secretary of [Health, Education, and Welfare] *Health and Human Services* shall certify to the Managing Trustee the amounts, if any, which should be transferred from one to any of the other of such Trust Funds and the amounts, if any, which should be transferred between the Trust Funds (or one of the Trust Funds) and the general fund in the Treasury, in order to insure that each of the Trust Funds and the general fund in the Treasury, have borne their proper share of the costs, incurred during such fiscal year, for the part of the administration of this title, title XVI, and title XVIII for which the Secretary of [Health, Education, and Welfare] *Health and Human Services* is responsible and of carrying out the functions of the Department of [Health, Education, and Welfare] *Health and Human Services,* specified in section 232, which relate to the administration of provisions of the Internal Revenue Code of 1954 (other than those referred to in clause (i) of the first sentence of subparagraph (A)). The Managing Trustee is authorized and directed to transfer any such amounts in accordance with any certification so made.

(2) The Managing Trustee is directed to pay from time to time from the Trust Funds into the Treasury the amount estimated by him as taxes imposed under section 3101(a) which are subject to refund under section 6413(c) of the Internal Revenue Code of 1954 with respect to wages (as defined in section 1426 of the Internal Revenue Code of 1939 and section 3121 of the Internal Revenue Code of 1954) paid after December 31, 1950. Such taxes shall be de-

termined on the basis of the records of wages established and maintained by the Secretary of [Health, Education, and Welfare] *Health and Human Services* in accordance with the wages reported to the Commissioner of Internal Revenue pursuant to section 1420(c) of the Internal Revenue Code of 1939 and to the Secretary of the Treasury or his delegate pursuant to subtitle F of the Internal Revenue Code of 1954, and the Secretary shall furnish the Managing Trustee such information as may be required by the Trustee for such purpose. The payments by the Managing Trustee shall be covered into the Treasury as repayments to the account for refunding Internal Revenue collections. Payments pursuant to the first sentence of this paragraph shall be made from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Funds in the ratio in which amounts were appropriated to such Trust Funds under clause (3) of subsection (a) of this section and clause (1) of subsection (b) of this section.

* * * * * * *

(4) The Board of Trustees shall prescribe before January 1, 1981, the method of determining the costs which should be borne by the general fund in the Treasury of carrying out the functions of the Department of [Health, Education, and Welfare] *Health and Human Services,* specified in section 232, which relate to the administration of provisions of the Internal Revenue Code of 1954 (other than those referred to in clause (i) of the first sentence of paragraph (1)(A)). If at any time or times thereafter the Boards of Trustees of such Trust Funds deem such action advisable they may modify the method so determined.

* * * * * * *

(i)(1) The Managing Trustee of the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, and the Federal Supplementary Medical Insurance Trust Fund is authorized to accept on behalf of the United States money gifts and bequests made unconditionally to any one or more of such Trust Funds or to the Department of [Health, Education, and Welfare] *Health and Human Services,* or any part or officer thereof, for the benefit of any of such Funds or any activity financed through such Funds.

* * * * * * *

(l)(1) * * *

* * * * * * *

(3)(A) If in any month after a loan has been made to a Trust Fund under paragraph (1), the Managing Trustee determines that the assets of such Trust Fund are sufficient to permit repayment of all or part of any loans made to such Fund under paragraph (1), he shall make such repayments as he determines to be appropriate.

(B)(i) If on the last day of any year after a loan has been made under paragraph (1) by the Federal Hospital Insurance Trust Fund to the Federal Old-Age and Survivors *Insurance* Trust Fund or the Federal Disability Insurance Trust Fund, the Managing Trustee determines that the OASDI trust fund ratio exceeds 15 percent, he shall transfer from the borrowing Trust Fund to the Federal Hospital Insurance Trust Fund an amount that—

(I) together with any amounts transferred from another borrowing Trust Fund under this paragraph for such year, will reduce the OASDI trust fund ratio to 15 percent; and

(II) does not exceed the outstanding balance of such loan.

* * * * * * *

OLD-AGE AND SURVIVORS INSURANCE BENEFIT PAYMENTS

Old-Age Insurance Benefits

SEC. 202. (a) * * *

* * * * * * *

Husband's Insurance Benefits

(c)(1) The husband (as defined in section 216(f)) and every divorced husband (as defined in section 216(d)) of an individual entitled to old-age or disability insurance benefits, if such husband or such divorced husband—

(A) has filed application for husband's insurance benefits,

(B) has attained age 62 or (in the case of a husband) has in his care (individually or jointly with such individual) at the time of filing such application a child entitled to child's insurance benefits on the basis of the wages and self-employment income of such individual,

(C) in the case of a divorced husband, is not married, and

(D) is not entitled to old-age or disability insurance benefits, or is entitled to old-age or disability insurance benefits based on a primary insurance amount which is less than one-half of the primary insurance amount of such individual,

shall (subject to subsection (s)) be entitled to a husband's insurance benefit for each month, beginning with—

(i) in the case of a husband or divorced husband (as so defined) of an individual who is entitled to an old-age insurance benefit, if such husband or divorced husband has attained [age 65] *retirement age (as defined in section 216(l))*, the first month in which he meets the criteria specified in subparagraphs (A), (B), (C), and (D), or

(ii) in the case of a husband or divorced husband (as so defined) of—

(I) an individual entitled to old-age insurance benefits, if such husband or divorced husband has not attained [age 65] *retirement age (as defined in section 216(l))*, or

(II) an individual entitled to disability insurance benefits,

the first month throughout which he is such a husband or divorced husband and meets the criteria specified in subparagraphs (B), (C), and (D) (if in such month he meets the criterion specified in subparagraph (A)),

whichever is earlier, and ending with the month preceding the month [to] *in* which any of the following occurs:

(E) he dies,

(F) such individual dies,

(G) in the case of a husband, they are divorced and either (i) he has not attained age 62, or (ii) he has attained age 62 but has not been married to such individual for a period of 10 years immediately before the divorce became effective,

(H) in the case of a divorced husband, he marries a person other than such individual,

(I) in the case of a husband who has not attained age 62, no child of such individual is entitled to a child's insurance benefit,

(J) he becomes entitled to an old-age or disability insurance benefit based on a primary insurance amount which is equal to or exceeds one-half of the primary insurance amount of such individual, or

(K) such individual is not entitled to disability insurance benefits and is not entitled to old-age insurance benefits.

* * * * * * *

(5)(A) Notwithstanding the preceding provisions of this subsection, except as provided in subparagraph (B), the divorced husband of an individual who is not entitled to old-age or disability insurance benefits, but who has attained age 62 and is a fully insured individual (as defined in section 214), if such divorced husband—

(i) meets the requirements of subparagraphs (A) though (D) of paragraph (1), and

(ii) has been divorced from such insured individual for not less than 2 years,

shall be entitled to a husband's insurance benefit under this subsection for each month, in such amount, and beginning and ending with such months, as determined (under regulations of the Secretary) in the manner otherwise provided for husband's insurance benefits under this subsection, as if such insured individual had become entitled to old-age insurance benefits on the date on which the divorced husband first meets the criteria for entitlement set forth in [classes] *clauses* (i) and (ii).

* * * * * * *

Child's Insurance Benefits

(d) (1) Every child (as defined in section 216(e)) of an individual entitled to old-age or disability insurance benefits, or of an individual how dies a fully or currently insured individual, if such child—

(A) * * *

* * * * * * *

(C) was dependent upon such individual—

(i) if such individual is living, at the time such application was filed,

(ii) if such individual has died, at the time of such death, or

(iii) if such individual had a period of disability which continued until he became entitled to old-age or disability insurance benefits, or (if he has died) until the month of his death, at the beginning of such period of disability or at the time he became entitled to such benefits,

shall be entitled to a child's insurance benefit for each month, beginning with—

(i) in the case of a child (as so defined) of such an individual who has died, the first month in which such child meets the criteria specified in subparagraphs (A), (B) and (C), or

(ii) in the case of a child (as so defined) of an individual entitled to an old-age insurance benefit or to a disability insurance benefit, the first month throughout which such child is a child (as so defined) and meets the criteria specified in [paragraphs] *subparagraphs* (B) and (C) (if in such month he meets the criterion specified in [paragraph] *subparagraph* (A)),

whichever is earlier, and ending with the month preceding whichever of the following first occurs—

* * * * * * *

(G) if such child was under a disaility (as so defined) at the time he attained the age of [18,] *18* or if he was not under a disability (as so defined) at such time but was under a disability (as so defined) at or prior to the time he attained (or would attain) [the age of 22, or, subject to section 223(e), the termination month (and for purposes] *the age of 22—*

(i) the termination month, subject to section 223(e) and for purposes of this subparagraph, the termination month for any individual shall be the third month following the month in which his disability ceases; except that, in the case of an individual who has a period of trial work which ends as determined by application of section 222(c)(4)(A), the termination month shall be the earlier of (I) the third month following the earliest month after the end of such period of trial work with respect to which such individual is determined to no longer be suffering from a disabling physical or mental impairment, or (II) the third month following the earliest month in which such individual engages or is determined able to engage in substantial gainful activity, but in no event earlier than the first month occurring [after the 15 months following such period of trial work in which he engages or is determined able to engage in substantial gainful activity, or (if later) the earlier of—

(III) the first month during no part of which he is a full-time elementary or secondary school student, or

(IV) the month in which he attains the age of 19,

but only if he was not under a disability (as so defined) in such earlier month.] *after the 15 months following such period of trial work in which he engages or is determined able to engage in substantial gainful activity),*

or (if later) the earlier of—

(ii) the first month during no part of which he is a full-time elementary or secondary school student, or

(iii) the month in which he attains the age of 19,

but only if he was not under a disability (as so defined) in such earlier month.

Entitlement of any child to benefits under this subsection on the basis of the wages and self-employment income of an individual entitled to disability insurance benefits shall also end with the month before the first month for which such individual is not entitled to such benefits unless such individual is, for such later month, entitled to old-age insurance benefits or unless he dies in such month. No payment under this paragraph may be made to a child who would not meet the definition of disability in section 223(d) except for paragraph (1)(B) thereof for any month in which he engages in substantial gainful activity.

(2) **[**Such**]** *Except as provided in section 202(k)(3)(A), such* child's insurance benefit for each month shall, if the individual on the basis of whose wages and self-employment income the child is entitled to such benefit has not died prior to the end of such month, be equal to one-half of the primary insurance amount of such individual for such month. **[**Such**]** *Except as so provided, such* child's insurance benefit for each month shall, if such individual has died in or prior to such month, be equal to three-fourths of the primary insurance amount of such individual.

* * * * * * *

(7) For the purposes of this subsection—

(A) A "full-time elementary or secondary school student" is an individual who is in full-time attendance as a student at an elementary or secondary school, as determined by the Secretary (in accordance with regulations prescribed by him) in the light of the standards and practices of the schools involved, except that no individual shall be considered a "full-time elementary or secondary school student" if he is paid by his employer while attending an elementary or secondary school at the request, or pursuant to a requirement, of his employer. An individual shall not be considered a "full-time elementary or secondary student" for the purpose of this section while that individual is confined in a jail, prison, or other penal institution or correctional facility, pursuant to his conviction of an offense (committed after **[**the date of the enactment of this paragraph**]** *the effective date of this sentence*) which constituted a felony under applicable law. An individual who is determined to be a full-time elementary or secondary school student shall be deemed to be such a student throughout the month with respect to which such determination is made.

* * * * * * *

Widow's Insurance Benefits

(e)(1) The widow (as defined in section 216(c)) and every surviving divorced wife (as defined in section 216(d)) of an individual who died a fully insured individual, if such widow or such surviving divorced wife—

(A) is not married,

(B)(i) has attained age 60, or (ii) has attained age 50 but has not attained age 60 and is under a disability (as defined in section 223(d)) which began before the end of the period specified in paragraph (4),

(C)(i) has filed application for widow's insurance benefits, or was entitled to wife's insurance benefits, on the basis of the wages and self-employment income of such individual, for the month preceding the month in which he died, and (I) has attained retirement age (as defined in section 216(l)) or (II) is not entitled to benefits under subsection (a) or section 223, or

(ii) was entitled, on the basis of such wages and self-employment income, to mother's insurance benefits for the month preceding the month in which she attained retirement age (as defined in section 216(l)), and

(D) is not entitled to old-age insurance benefits or is entitled to old-age insurance benefits each of which is less than the primary insurance amount (as determined after application of subparagraphs (B) and (C) of paragraph (2)) of such deceased individual,

shall be entitled to a widow's insurance benefit for each month, beginning with—

(E) if she satisfies subparagraph (B) by reason of clause (i) thereof, the first month in which she becomes so entitled to such insurance benefits, or

(F) if she satisfies subparagraph (B) by reason of clause (ii) thereof—

(i) the first month after her waiting period (as defined in paragraph (5)) in which she becomes so entitled to such insurance benefits, or

(ii) the first month during all of which she is under a disability and in which she becomes so entitled to such insurance benefits, but only if she was previously entitled to insurance benefits under this subsection on the basis of being under a disability and such first month occurs (I) in the period specified in paragraph (4) and (II) after the month in which a previous entitlement to such benefits on such basis terminated,

and ending with the month preceding the first month in which any of the following occurs: she remarries, dies, becomes entitled to an old-age insurance benefit equal to or exceeding the primary insurance amount (as determined after application of subparagraphs (B) and (C) of paragraph (2)) of such deceased individual, or, if she became entitled to such benefits before she attained age **[**60**]**, *60 subject to section 223(e),* the termination month (unless she attains retirement age (as defined in section 216(l)) on or before the last day of such termination month). For purposes of the preceding sentence, the termination month for any individual shall be the third month following the month in which her disability ceases; except that, in the case of an individual who has a period of trail work which ends as determined by application of section 222(c)(4)(A), the termination month shall be the earlier of (I) the third month following the earliest month after the end of such period of trial work with respect to which such individual is determined to no longer be suffering from a disabling, physical or mental impairment, or (II) the third month following the earliest month in which such individual engages or is determined able to engage in substantial gainful activity, but in no event earlier than the first month occuring after the 15 months following such period of trial work in which [he] *she* engages or is determined able to engage in substantial gainful activity.

(2)(A) Except as provided in subsection (q) [paragraph (8) of this subsection, and] *subparagraph (D) of this paragraph, such widow's insurance benefit for each month shall be equal to the primary insurance amount (as determined for purposes of this subsection after application of subparagraphs (B) and (C)) of such deceased individual.*

* * * * * * *

(C) If such deceased [individual.] *individual* was (or upon application would have been) entitled to an old-age insurance benefit which was increased (or subject to being increased) on account of delayed retirement under the provisions of subsection (w), then, for purposes of this subsection, such individual's primary insurance amount, if less than the old-age insurance benefit (increased, where applicable, under section 215(f)(5), 215(f)(6), or 215(f)(9)(B) and under section 215(i) as if such individual were still alive in the case of an individual who has died) which he was receiving (or would upon application have received) for the month prior to the month in which he died, shall be deemed to be equal to such old-age insurance benefit, and (notwithstanding the provisions of paragraph (3) of such subsection (w)*)* the number of increment months shall include any month in the months of the calendar year in which he died, prior to the month in which he died, which satisfy the conditions in paragraph (2) of such subsection (w).

* * * * * * *

(7) (A) The amount of a widow's insurance benefit for each month as determined (after application of the provisions of subsections (q) and (k), paragraph [(2)(B),] *(2)(D),* and paragraph (3)) shall be reduced (but not below zero) by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to such widow (or surviving divorced wife) for such month which is based upon her earnings while in the service of the Federal Government or any State (or any political subdivision thereof, as defined in section 218(b)(2)) if, on the last day she was employed by such entity, such service did not constitute "employment" as defined in section 210 for purposes of this title. The amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.

* * * * * * *

Widower's Insurance Benefits

(f)(1) The widower (as defined in section 216(g)) and every surviving divorced husband (as defined in section 216(d)) of an individual who died a fully insured individual, if such widower or such surviving divorced husband—

(A) is not remarried,

(B)(i) has attained age 60, or (ii) has attained age 50 but has not attained age 60 and is under a disability (as defined in section 223(d)) which began before the end of the period specified in paragraph (5),

(C)(i) has filed application for widower's insurance benefits or was entitled to husband's insurance benefits, on the basis of the wages and self-employment income of such individual, for the month preceding the month in which she died, and (I) was attained retirement age (as defined in section 216(l)) or (II) is not entitled to benefits under subsection (a) or section 223, or

(ii) was entitled, on the basis of such wages and self-employment income, to father's insurance benefits for the month preceding the month in which he attained [age 65] *retirement age (as defined in section 216(l))*, and

* * * * * * *

(F) if he satisfies subparagraph (B) by reason of clause (ii) thereof—

(i) the first month after his waiting period (as defined in paragraph (6)) in which he becomes so entitled to such insurance benefits, or

(ii) the first month during all of which he is under a disability and in which he becomes so entitled to such insurance benefits, but only if he was previously entitled to insurance benefits under this subsection on the basis of being under a disability and such first month occurs (I) in the period specified in paragraph (5) and (II) after the month in which a previous entitlement to such benefits on such basis terminated,

and ending with the month preceding the first month in which any of the following occurs: he remarries, dies, or becomes entitled to an old-age insurance benefit equal to or exceeding the primary insurance amount (as determined after application of subparagraphs (B) and (C) of paragraph (3)) of such deceased individual, or, if he became entitled to such benefits before he attained age 60, subject to section 223(e), the termination month (unless he attains retirement age (as defined in section 216(l)) on or before the last day of such termination month). For purposes of the preceding sentence, the termination month for any individual shall be the third month following the month in which his disability ceases; except that, in the case of an individual who has a period of trial work which ends as determined by application of section 222(c)(4)(A), the termination month shall be the earlier of (I) the third month following the earliest month after the end of such period of trial work with respect to which such individual is determined to no longer be suffering from a disabling physical or mental impairment, or (II) the third month following the earliest month in which such individual engages or is determined able to engage in substantial gainful activity, but in no event earlier than the first month occurring after the 15 months following such period of trial work in which he engages or is determined able to engage in substantial gainful activity.

(2)(A) The amount of a widower's insurance benefit for each month (as determined after application of the provisions of subsections (k) and (q), paragraph [(3)(B)], *(3)(D)*, and paragraph (4)) shall be reduced (but not below zero) by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to such widower for such month which is based upon his earnings while in the service of the Federal Government or any State (or any political subdivision thereof, as defined in section 218(b)(2)) if, on the last day he was employed by such entity, such service did not constitute "employment" as defined in section 210 for purposes of this title. The amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.

*3)(A) * * *

* * * * * * *

(C) If such deceased [individual.] *individual* was (or upon application would have been) entitled to an old-age insurance benefit which was increased (or subject to being increased) on account of delayed retirement under the provisions of subsection (w), then, for purposes of this subsection, such individual's primary insurance amount, if less than the old-age insurance benefit (increased, where applicable, under section 215(f)(5), 215(f)(6), or 215(f)(9)(B) and under section 215(i) as if such individual were still alive in the case of an individual who has died) which she was receiving (or would upon application have received) for the month prior to the month in which she died, shall be deemed to be equal to such old-age insurance benefit, and (notwithstanding the provisions of paragraph (3) of such subsection (w)) the number of increment months shall include any month in the months of the calendar year in which she died, prior to the month in which she died, which satisfy the conditions in paragraph (2) of such subsection (w).

(D) If the deceased individual (on the basis of whose wages and self-employment income a widower or surviving divorced husband is entitled to widower's insurance benefits under this subsection) was, at any time, entitled to an old-age insurance benefit which was reduced by reason of the application of subsection (q), the widower's insurance benefit of such widower or surviving divorced husband for any month shall, if the amount of the widower's insurance benefit of such widower or surviving divorced husband (as determined under subparagraph (A) and after application of subsection (q)) is greater than—

(i) the amount of the old-age insurance benefit to which such deceased individual would have been entitled (after application of subsection (q)) for such month if such individual were still living and section 215(f)(5), 215(f)(6), or 215(f)(9)(B) were applied, where applicable, [;] and

* * * * * * *

Reduction of Benefit Amounts for Certain Beneficiaries

(q) (1) * * *

* * * * * * *

(7) For purposes of this subsection, the "adjusted reduction period" for an individual's old-age, wife's, husband's, widow's or

widower's insurance benefit is the reduction period prescribed in paragraph (6) for such benefit, excluding—

(A) * * *

* * * * * * *

(E) in the case of widow's or widower's insurance benefits, any month before the month in which she or he attained age 62, and also for any later month before the month in which *she or* he attailed retirement age, for which she or he was not entitled to such benefit because of the occurrence of an event that terminated her or his entitilement to such benefits, and

* * * * * * *

(9) The amount of the reduction for early retirement specified in paragraph (1)—

(A) for old-age insurance benefits, wife's insurance benefits, and husband's insurance benefits, shall be the amount specified in such paragraph for the first 36 months of the reduction period (as defined in paragraph (6)) or adjusted reduction period (as defined in paragraph (7)), and five-twelfths of 1 percent for any additional months included in such periods; and

(B) for widow's insurance benefits and widower's insurance benefits, shall be periodically revised by the Secretary such that—

(i) the amount of the reduction at early retirement age as defined in section [216(a)] *(216)(l)* shall be 28.5 percent of the full benefit; and

(ii) the amount of the reduction for each month in the reduction period (specified in paragraph (6)) or the adjusted reduction period (specified in paragraph (7)) shall be established by linear interpolation between 28.5 percent at the month of attainment of early retirement age and 0 percent at the month of attainment of retirement age.[4]

* * * * * * *

Suspension of Benefits of Aliens Who Are Outside the United States; Residency Requirements for Dependents and Survivors

(t) (1) * * *

* * * * * * *

(4) Subject to paragraph (11), paragraph (1) shall not apply to any benefit for any month if—

(A) * * *

* * * * * * *

(E) the individual on whose employment such benefit is based had been in service covered by the Railroad Retirement Act *of 1937 or 1974* which was treated as employment covered by this Act pursuant to the provisions of section 5(k)(1) of the Railroad Retirement Act *of 1937 or section 18(2) of the Railroad Retirement Act of 1974*;

* * * * * * *

Conviction of Subversive Activities, Etc.

(u)(1) If any individual is convicted of any offense (committed after the date of the enactment of this subection) under—

(A) chapter 37 (relating to espionage and censorship), chapter 105 (relating to sabotage), or chapter 115 (relating to treason, sedition, and subversive activities) of title 18 of the United States Code, or

(B) section 4[, 112, or 113] of the Internal Security Act of 1950, as amended[3],

then the court may, in addition to all other penalties provided by law, impose a penalty that in determining whether any monthly insurance benefit under this section or section 223 is payable to such individual for the month in which he is convicted or for any month thereafter, in determining the amount of any such benefit payable to such individual for any such month, and in determining whether such individual is entitled to insurance benefits under part A of title XVIII for any such month, there shall not be taken into account—

(C) any wages paid to such individual or to any other individual in the calendar year in which such conviction occurs or in any prior calendar year, and

(D) any net earnings from self-employment derived by such individual or by any other individual during a taxable year in which such conviction occurs or during any prior taxable year.

* * * * * * *

Limitation on Payments to Prisoners

(x)(1) Notwithstanding any other provision of this title, no monthly benefits shall be paid under this section or under section 223 to any individual for any month during which such individual is confined in a jail, prison, or other penal institution or correctional facility, pursuant to his conviction of an offense which constituted a felony under applicable law, unless such individual is actively and satisfactorily participating in a rehabilitation program which has been specifically approved for such individual by a court of law and, as determined by the Secretary, is expected to result in such individual being able to engage in substantial gainful activity upon release and within a reasonble time.

* * * * * * *

Reduction of insurance benefits

MAXIMUM BENEFITS

Sec. 203. (a)(1) * * *

* * * * * * *

(8) Subject to paragraph (7), this subsection as in effect in December 1978 shall remain in effect with respect to a primary insurance amount computed under section 215(a) or (d), as in effect (without regard to the table contained therein) in December 1978 except that a primary insurance amount so computed with respect to an individual who first becomes eligible for an old-age or disability in-

surance benefit, or dies (before becoming eligible for such a benefit), after December 1978, shall instead be governed by this section as in effect after December 1978. For purposes of the preceding sentence, the phrase "rounded to the next higher multiple of $0.10", as it appeared in subsection (a)(2)(C) of this section as in effect in December 1978, shall be deemed to read "rounded to the next lower multiple of [$0.10"] *$0.10"*.

* * * * * * *

Deductions From Dependents' Benefits on Account of Noncovered Work Outside the United States by Old-Age Insurance Beneficiary

(d) (1)(A) Deductions shall be made from any wife's, husband's or child's insurance benefit, based on the wages and self-employment income of an individual entitled to old-age insurance benefits, to which a wife, divorced wife, husband, divorced husband, or child is entitled, until the total of such deductions equals such wife's, husband's or child's insurance benefit or benefits under section 202 for any month in which such individual is under the age of seventy and [on seven or more different calendar days which he engaged] *for more than forty-five hours of which such individual engaged* in noncovered remunerative activity outside the United States.

* * * * * * *

(2) Deductions shall be made from any child's insurance benefit to which a child who has attained the age of eighteen is entitled, or from any mother's or father's insurance benefit to which a person is entitled, until the total of such deductions equals such child's insurance benefit or benefits or mother's or father's insurance benefit or benefits under section 202 for any month in which such child or person entitled to mother's or father's insurance benefits is married to an individual *under the age of seventy* who is entitled to old-age insurance benefits and [on seven or more different calendar days] *for more than forty-five hours* of which such individual engaged in noncovered remunerative activity outside the United States.

* * * * * * *

Months to Which Earnings Are Charged

(f) For purposes of subsection (b)—

(1) * * *

* * * * * * *

(5)(A) An individual's earnings for a taxable year shall be (i) the sum of his wages for services rendered in such year and his net earnings from self-employment for such year, minus (ii) any net loss from self-employment for such year.

(B) For purposes of this section—

(i) an individual net earnings from self-employment for any taxable year shall be determined as provided in section 211, except that paragraphs (1), (4), and (5) of section 211(c) shall not apply and the gross income shall be computed by excluding the amounts provided by subparagraph (D), and

(ii) an individual's net loss from self-employment for any taxable year is the excess of the deductions (plus his distributive share of loss described in section [702(a)(9)] *702(a)(8)* of the Internal Revenue Code of 1954) taken into account under clause (i) over the gross income (plus his distributive share of income so described) taken into account under clause (i).

* * * * * * *

(8)(A) Whenever the Secretary pursuant to section 215(i) increases benefits effective with the month of December following a cost-of-living computation quarter he shall also determine and publish in the Federal Register on or before November 1 of the calendar year in which such quarter occurs the new exempt amounts (separately stated for individuals described in subparagraph (D) and for other individuals) which are to be applicable (unless prevented from becoming effective by subparagraph (C)) with respect to taxable years ending in (or with the close of) the calendar year after the calendar year in which such benefit increase is effective (or, in the case of an individual who dies during the calendar year after the calendar year in which the benefit increase is effective, with respect to such individual's taxable year which ends, upon his death, during such year).

[THE INDENTATIONS OF THE FOLLOWING SUBPARAGRAPHS ARE REALIGNED BY THE BILL TO CONFORM TO THE PRECEDING SUBPARAGRAPH.]

(B) Except as otherwise provided in subparagraph (D), the exempt amount which is applicable to individuals described in such subparagraph and the exempt amount which is applicable to other individuals, for each month of a particular taxable year, shall each be whichever of the following is the larger—

(i) the corresponding exempt amount which is in effect with respect to months in the taxable year in which the determination under subparagraph (A) is made, or

(ii) the product of the exempt amount described in clause (i) and the ratio of (I) the average of the total wages (as defined in regulations of the Secretary and computed without regard to the limitations specified in section 209(a)) reported to the Secretary of the Treasury or his delegate for the calendar year before the calendar year in which the determination under subparagraph (A) is made to (II) the average of the total wages (as so defined and computed) reported to the Secretary of the Treasury or his delegate for the calendar year before the most recent calendar year in which an increase in the exempt amount was enacted or a determination resulting in such an increase was made under subparagraph (A), with such product, if not a multiple of $10, being rounded to the next higher multiple of $10 where such product is a multiple of $5 but not of $10 and to the nearest multiple of $10 in any other case.

Whenever the Secretary determines that an exempt amount is to be increased in any year under this paragraph, he shall notify the House Committee on Ways and Means and the Senate Committee on Finance within 30 days after the close of the base quarter (as defined in section 215(i)(1)(A)) in such year of the estimated amount of such increase, indicating the new exempt amount, the actuarial estimates of the effect of the increase, and the actuarial assumptions and methodology used in preparing such estimates.

(C) Notwithstanding the determination of a new exempt amount by the Secretary under subparagraph (A) (and notwithstanding any publication thereof under such subparagraph or any notification thereof under the last sentence of subparagraph(B)), such new exempt amount shall not take effect pursuant thereto if during the calendar year in which such determination is made a law increasing the exempt amount is enacted.

* * * * * * *

EVIDENCE, PROCEDURE, AND CERTIFICATION FOR PAYMENT

SEC. 205. (a) * * *

(b)(1) The Secretary is directed to make findings of fact, and decisions as to the rights of any individual applying for a payment under this title. Any such decision by the Secretary which involves a determination of disability and which is in whole or in part unfavorable to such individual shall contain a statement of the case, in understandable language, setting forth a discussion of the evidence, and stating the Secretary's determination and the reason or reasons upon which it is based. Upon request by any such individual or upon request by a wife, divorced wife, widow, surviving divorced wife, surviving divorced mother, surviving divorced father, husband, divorced husband, widower, surviving divorced husband, child, or parent who makes a showing in writing that his or her rights may be prejudiced by any decision the Secretary has rendered, he shall give such applicant and such other individual reasonable notice and opportunity for a hearing with respect to such decision, and, if a hearing is held, shall, on the basis of evidence adduced at the hearing, affirm, modify, or reverse his findings of fact and such decision. Any such request with respect to such a decision must be filed within sixty days after notice of such decision is received by the individual making such request. *Reviews of disability determinations on which decisions relating to continued entitlement to benefits are based shall be governed by the provisions of section 221(d)(2).* The Secretary is further authorized, on his own motion, to hold such hearings and to conduct such investigations and other proceedings as he may deem necessary or proper for the administration of this title. In the course of any hearing, investigation, or other proceeding, he may administer oaths and affirmations, examine witnesses, and receive evidence. Evidence may be received at any hearing before the Secretary even though inadmissible under rules of evidence applicable to court procedure.

[(2) In any case where—

[(A) an individual is a recipient of disability insurance benefits, or of child's, widow's, or widower's insurance benefits based on disability,

[(B) the physical or mental impairment on the basis of which such benefits are payable is found to have ceased, not to have existed, or to no longer be disabling, and

[(C) as a consequence of the finding described in subparagraph (B), such individual is determined by the Secretary not to be entitled to such benefits,

any reconsideration of the finding described in subparagraph (B), in connection with a reconsideration by the Secretary (before any hearing under paragraph (1) on the issue of such entitlement) of his determination described in subparagraph (C), shall be made only after opportunity for an evidentiary hearing, with regard to the finding described in subparagraph (B), which is reasonably accessible to such individual. Any reconsideration of a finding described in subparagraph (B) may be made either by the State agency or the Secretary where the finding was originally made by the State agency, and shall be made by the Secretary where the finding was originally made by the Secretary. In the case of a reconsideration by a State agency of a finding described in subparagraph (B) which was originally made by such State agency, the evidentiary hearing shall be held by an adjudicatory unit of the State agency other than the unit that made the finding described in subparagraph (B). In the case of a reconsideration by the Secretary of a finding described in subparagraph (B) which was originally made by the Secretary, the evidentiary hearing shall be held by a person other than the person or persons who made the finding described in subparagraph (B).]

(2) Notwithstanding subsection (a)(2) of section 553 of title 5, United States Code, the rulemaking requirements of subsections (b) through (e) of such section shall apply to matters relating to benefits under this title. With respect to matters to which rulemaking requirements under the proceding sentence apply, only those rules prescribed pursuant to subsections (b) through (e) of such section 553 and related provisions governing notice and comment rulemaking under subchapter II of chapter 5 of such title 5 (relating to administrative procedure) shall be binding at any level of review by a State agency or the Secretary, including any hearing before an administrative law judge.

(c)(1) * * *

* * * * * * *

(5) After the expiration of the time limitation following any year in which wages were paid or alleged to have been paid to, or self-employment income was derived or alleged to have been derived by, an individual, the Secretary may change or delete any entry with respect to wages or self-employment income in his records of such year for such individual or include in his records of such year for such individual any omitted item of wages or self-employment income but only—

(A) * * *

* * * * * * *

(D) to transfer items to records of the Railroad Retirement Board if such items were credited under this title when they should have been credited under the Railroad Retirement Act *of 1937 or 1974* or to enter items transferred by the Railroad Retirement Board which have been credited under the Railroad Retirement Act *of 1937 or 1974,* when they should have been credited under this title;

* * * * * * *

(I) to enter items which constitute remuneration for employment under subsection (o), such entries to be in accordance with certified reports of records made by the Railroad Retirement Board pursuant to section 5(k)(3) of the Railroad Retirement Act of 1937 *or section 7(b)(7) of the Railroad Retirement Act of 1974*; or

(J) to include self-employment income for any taxable year, up to, but not in excess of, the amount of wages deleted by the Secretary as payments erroneously included in such records as wages paid to such individual, if such income (or net earnings from self-employment), not already included in such records as self-employment income, is included in a return or statement (referred to in subparagraph (F)) filed before the expiration of the time limitation following the taxable year in which such deletion of wages is made.

* * * * * * *

(e) In case of contumacy by, or refusal to obey a subpena duly served upon, any person, any district court of the United States for the judicial district in which said person charged with contumacy or refusal to obey is found or resides or transacts business, upon application by the Secretary, shall have jurisdiction to issue [on] *an* order requiring such person to appear and give testimony, or to appear and produce evidence, or both; any failure to obey such order of the court may be punished by said court as contempt thereof.

* * * * * * *

(h) The findings and decision of the Secretary after a hearing shall be binding upon all individuals who were parties to such hearing. No findings of fact or decision of the Secretary shall be reviewed by any person, tribunal, or governmental agency except as herein provided. No action against the United States, the Secretary, or any officer or employee thereof shall be brought under [section 24 of the Judicial Code of the United States] *section 1331 or 1346 of title 28, United States Code,* to recover on any claim arising under this title.

(i) Upon final decision of the Secretary, or upon final judgment of any court of competent jurisdiction, that any person is entitled to any payment or payments under this title, the Secretary shall certify to the Managing Trustee the name and address of the person so entitled to receive such payment or payments, the amount of such payment or payments, and the time at which such payment or payments should be made, and the Managing Trustee, through [the Division of Disbursement of the Treasury Department,] *the Fiscal Service of the Department of the Treasury,* and prior to any action thereon by the General Accounting Office, shall make payment in accordance with the certification of the Secretary (except that in the case of (A) an individual who will have completed ten years of service creditable under the Railroad Retirement Act of 1937 or the Railroad Retirement Act of 1974, (B) the wife or husband of such an idividual, (C) any survivor of such an individual if such a survivor is entitled, or could upon application become entitled, to an annuity under section 2 of the Railroad Retirement Act of 1974, and (D) any other person entitled to benefits under section 202 of this Act on the basis of the wages and self-employment income of such an individual (except a survivor of such an individual where such individual did not have a current connection with the railroad industry, as defined in the Railroad Retirement Act of 1974, at the time of his death), such certification shall be made to the Railroad Retirement Board which shall provide for such payment or payments to such person on behalf of the Managing Trustee in accordance with the provisions of the Railroad Retirement Act of 1974): *Provided,* That where a review of the Secretary's decision is or may be sought under subsection (g) the Secretary may withhold certication of payment pending such review. The Managing Trustee shall not be held personally liable for any payment or payments made in accordance with a certication by the Secretary.

* * * * * * *

(1) The Secretary is authorized to delegate to any member, officer, or [employee of the Department of Health, Education, and Welfare designated] *employee of the Department of Health and Human Services designated* by him any of the powers conferred upon him by this section, and is authorized to be represented by his own attorneys in any court in any case or proceeding arising under the provisions of subsection (e).

* * * * * * *

Special Rules in Case of Federal Service

(p)(1) With respect to service included as employment under section 210 which is performed in the employ of the United States or in the employ of any instrumentality which is wholly owned by the United States, including service, performed as a member of a uniformed service, to which the provisions of subsection (l)(1) of such section are applicable, and including service, performed as a volunteer or volunteer leader within the meaning of the Peace Corps Act, to which the provisions of section 210(o) are applicable, the Secretary shall not make determinations as to whether an individual has performed such service, the periods of such service, the amounts of remuneration for such service which constitute wages under the provisions of section 209, or the periods in which or for which such wages were paid, but shall accept the determinations with respect thereto of the head of the appropriate Federal agency or instrumentality, and of such agents as such head may designate, as evidenced by returns filed in accordance with the provisions of section [1420(e) of the Internal Revenue Code] *3122 of the Inter-*

nal Revenue Code of 1954 and certifications made pursuant to this subsection. Such determinations shall be final and conclusive.

* * * * * * *

Use of Death Certificates to Correct Program Information

[Use of Death Certificates to Correct Program Information]

(r)(1)* * *

* * * * * * *

(4) The Secretary may enter into similar agreements with States to provide information for their use in programs wholly funded by the States if the requirements of [(r)(3)(A) and (r)(3)(B)] *subparagraphs (A) and (B) of paragraph (3)* are met.

* * * * * * *

(7) The Secretary shall include information on the status of the program established under this section and impediments to the effective implementation of the program in the 1984 report required under section 704 of [the] *this* Act.

* * * * * * *

PENALTIES

SEC. 208. Whoever—

(a) for the purpose of causing an increase in any payment authorized to be made under this title, or for the purpose of causing any payment to be made where no payment is authorized under this title, shall make or cause to be made any false statement or representation (including any false statement or representation in connection with any matter arising under subchapter E of chapter 1, or subchapter A or E of chapter 9 of the Internal Revenue Code of 1939, or chapter 2 or 21 or subtitle F of the Internal Revenue Code of 1954) as to—

(1) whether wages were paid or received for employment (as said terms are defined in this title and the Internal Revenue Code), or the amount of wages or the period during which paid or the person to whom paid; or

(2) whether net earnings from self-employment (as such term is defined in this title and in the Internal Revenue Code) were derived, or as to the amount of such net earnings of the period during which or the person by whom derived; or

(3) whether a person entitled to benefits under this title had earnings in or for a particular period (as determined under section 203(f) of this title for purposes of deductions from benefits), or as to the amount thereof; or

* * * * * * *

[THE INDENTATIONS OF THE FOLLOWING SUBPARAGRAPHS ARE REALIGNED BY THE BILL TO CONFORM TO THE PRECEDING SUBPARAGRAPHS.]

(f) willfully, knowingly, and with intent to deceive the Secretary as to his true identity (or the true identity of any other person) furnishes or causes to be furnished false information to the Secretary with respect to any information required by the Secretary in connection with the establishment and maintenance of the records provided for in section 205(c)(2); or

(g) for the purpose of causing an increase in any payment authorized under this title (or any other program financed in whole or in part from Federal funds), or for the purpose of causing a payment under this title (or any such other program) to be made when no payment is authorized thereunder, or for the purpose of obtaining (for himself or any other person) any payment or any other benefit to which he (or such other person) is not entitled, or for the purpose of obtaining anything of value from any person, or for any other purpose—

(1) willfully, knowingly, and with intent to deceive, uses a social security account number, assigned by the Secretary (in the exercise of his authority under section 205(c)(2) to establish and maintain records) on the basis of false information furnished to the Secretary by him or by any other person; or

(2) with intent to deceive, falsely represents a number to be the social security account number assigned by the Secretary to him or to another person, when in fact such number is not the social security account number assigned by the Secretary to him or to such other person; or

(3) knowingly alters a social security card issued by the Secretary, buys or sells a card that is, or purports to be, a card so issued, counterfeits a social security card, or possesses a social security card or counterfeit social security card with intent to sell or alter it; or

(h) discloses, uses, or compels the disclosure of the social security number of any person in violation of the laws of the United States; shall be guilty of a felony and upon conviction thereof shall be fined not more than $5,000 or imprisoned for not more than five years, or both.

DEFINITION OF WAGES

SEC. 209. For the purposes of this title, the term "wages" means remuneration paid prior to 1951 which was wages for the purposes of this title under the law applicable to the payment of such remuneration, and remuneration paid after 1950 for employment, including the cash value of all remuneration paid in any medium other than cash; except that, in the case of remuneration paid after 1950, such term shall not include—

(a)(1) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to $3,600 with respect to employment has been paid to an individual during any calendar year prior to 1955, is paid to such individual during such calendar year;

* * * * * * *

[THE INDENTATIONS OF THE FOLLOWING ARE REALIGNED BY THE BILL TO CONFORM TO THE PRECEDING PARAGRAPHS.]

(5) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to $7,800 with respect to employment has been paid to an individual during any calendar year after 1967 and prior to 1972, is paid to such individual during such calendar year;

(6) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to $9,000 with respect to employment has been paid to an individual during any calendar year after 1971 and prior to 1973 is paid to such individual during any such calendar year;

(7) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to $10,800 with respect to employment has been paid to an individual during any calendar year after 1972 and prior to 1974, is paid to such individual during such calendar year;

(8) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to $13,200 with respect to employment has been paid to an individual during any calendar year after 1973 and prior to 1975, is paid to such individual during such calendar year;

(9) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to the contribution and benefit base (determined under section 230) with respect to employment has been paid to an individual during any calendar year after 1974 with respect to which such contribution and benefit base is effective, is paid to such individual during such calendar year;

* * * * * * *

[THE INDENTATIONS OF THE FOLLOWING SUBSECTIONS (E), (F), AND (K)-(R) ARE REALIGNED BY THE BILL TO CONFORM TO THE PRECEDING SUBSECTIONS.]

(e) Any payment made to, or on behalf of, an employee or his beneficiary (1) from or to a trust exempt from tax under section 165(a) of the Internal Revenue Code of 1939 at the time of such payment or, in the case of a payment after 1954, under sections 401 and 501(a) of the Internal Revenue Code of 1954 unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust, or (2) under or to an annuity plan which, at the time of such payment, meets the requirements of section 165(a) (3), (4), (5), and (6) of the Internal Revenue Code of 1939 or, in the case of a payment after 1954 and prior to 1963, the requirements of section 401(a) (3), (4), (5), and (6) of the Internal Revenue Code of 1954, or (3) under or to an annuity plan which, at the time of any such payment after 1962, is a plan described in section 403(a) of the Internal Revenue Code of 1954, or (4) under or to a bond purchase plan which, at the time of any such payment after 1962, is a qualified bond purchase plan described in section 405(a) of the Internal Revenue Code of 1954 *(as in effect before the enactment of the Tax Law Simplification and Improvement Act of 1983)*; or (5) under or to an annuity contract described in section 403(b) of the Internal Revenue Code of 1954, other than a payment for the purchase of such contract which is made by reason of a salary reduction agreement (whether evidenced by a written instrument or otherwise), or (6) under or to an exempt governmental deferred compensation plan (as defined in section 3121(v)(3) of such Code), or (7) to supplement pension benefits under a plan or trust described in any of the foregoing provisions of this subsection to take into account some portion or all of the increase in the cost of living (as determined by the Secretary of Labor) since retirement but only if such supplemental payments are under a plan which is treated as a welfare plan under section 3(2)(B)(ii) of the Employee Retirement Income Security Act of 1974 **[;]**, or (8) under a simplified employee pension (as defined in section 408(k) of the Internal Revenue Code of 1954) if, at the time of the payment, it is reasonable to believe that the employee will be entitled to a deduction under section 219(b)(2) of such Code for such payment;

(f) The payment by an employer (without deduction from the remuneration of the employee)—

(1) of the tax imposed upon an employee under section 3101 of the Internal Revenue Code of 1954, or

(2) of any payment required from an employee under a State unemployment compensation law,

with respect to remuneration paid to an employee for domestic service in a private home of the employer or for agricultural labor;

* * * * * * *

(k) Remuneration paid to or on behalf of an employee if (and to the extent that) at the time of the payment of such remuneration it is reasonable to believe that a corresponding deduction is allowable under section 217 of the Internal Revenue Code of 1954;

(1)(l) Tips paid in any medium other than cash;

(2) Cash tips received by an employee in any calendar month in the course of his employment by an employer unless the amount of such cash tips is $20 or more;

(m) Any payment or series of payments by an employer to an employee or any of his dependents which is paid—

(1) upon or after the termination of an employee's employment relationship because of (A) death, or (B) retirement for disability,

(2) under a plan established by the employer which makes provision for his employees generally or a class or classes of his employees (or for such employees or class or classes of employees and their dependents),

other than any such payment or series of payments which would have been paid if the employee's employment relationship had not been so terminated;

(n) Any payment made by an employer to a survivor or the estate of a former employee after the calendar year in which such employee died;

(o) Any payment made by an employer to an employee, if at the time such payment is made such employee is entitled to disability insurance benefits under section 223(a) and such entitlement commenced prior to the calendar year in which such payment is made, and if such employee did not perform any services for such employer during the period for which such payment is made;

(p)*(1)* Remuneration paid by an organization exempt from income tax under section 501 of the Internal Revenue Code of 1954 in any calendar year to an employee for service rendered in the employ of such organization, if the remuneration paid in such year by the organization to the employee for such service is less than [$100.] *$100;*

[(p)] *(2)* Any contribution, payment, or service, provided by an employer which may be excluded from the gross income of an employee, his spouse, or his dependents, under the provisions of section 120 of the Internal Revenue Code of 1954 (relating to amounts received under qualified group legal services plans);

(q) Any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 127 or 129 of the Internal Revenue Code of 1954; [or]

(r) The value of any meals or lodging furnished by or on behalf of the employer if at the time of such furnishing it is reasonable to believe that the employee will be able to exclude such items from income under section 119 of the Internal Revenue Code of 1954[.]*; or*

(s) Any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from income under section 117 or 132 of the Internal Revenue Code of 1954.

* * * * * * *

For purposes of this title, in the case of an individual performing service, as a member of a uniformed service, to which the provisions of section 210(l)(1) are applicable, the term "wages" shall, subject to the provisions of subsection (a) of this section, include as such individual's renumeration for such service only his basic pay as described in section [102(10) of the Servicemen's and Veterans'

Survivor Benefits Act.] *chapter 3 and section 1009 of title 37, United States Code*

* * * * * * *

Nothing in any of the foregoing provisions of this section (other than subsection (a)) shall exclude from the term "wages"—

(1) Any employer contribution under a qualified cash or deferred arrangement (as defined in section 401(k) of the Internal Revenue Code of 1954) to the extent not included in gross income by reason of section 402(a)(8) of such Code, or

(2) Any amount which is treated as an employer contribution under section 414(h)(2) of such Code *where the pickup referred to in such section is pursuant to a salary reduction agreement (whether evidenced by a written instrument or otherwise).*

Any amount deferred under a nonqualified deferred compensation plan (within the meaning of section 3121(v)(2)(C) of the Internal Revenue Code of 1954) shall be taken into account for purposes of this title as of the later of when the services are performed, or when there is no substantial risk of forfeiture of the rights to such amount. Any amount taken into account as wages by reason of the preceding sentence (and the income attributable thereto) shall not thereafer be treated as wages for purposes of this title.

DEFINITION OF EMPLOYMENT

SEC. 210. For the purposes of this title—

Employment

(a) The term "employment" means any service performed after 1936 and prior to 1951 which was employment for the purposes of this title under the law applicable to the period in which such service was performed, and any service, of whatever nature, performed after 1950 (A) by an employee for the person employing him, irrespective of the citizenship or residence of either, (i) within the United States, or (ii) on or in connection with an American vessel or American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the employee is employed on the vessel or aircraft it touches at a port in the United States, if the employee is employed on and in connection with such vessel or aircraft when outside the United States, or (B) outside the United States by a citizen or resident of the United States as an employee (i) of an American employer (as defined in subsection (e) of this section), or (ii) of a foreign affiliate (as defined in section 3121(l)(8) of the Internal Revenue Code of 1954) of an American employer during any period for which there is in effect an agreement, entered into pursuant to section 3121(l) of such Code[5] with respect to such affiliate [,] [6], [7] or (C) if it is service, regardless of where or by whom performed, which is designated as employment or recognized as equivalent to employment under an agreement entered into under section 233; except that, in the case of service performed after 1950, such term shall not include—

(1) Service performed by foreign agricultural workers [(A) under contracts entered into in accordance with title V of the

Agricultural Act of 1949, as amended, or (B)] lawfully admitted to the United States from the Bahamas, Jamaica, and the other British West Indies, or from any other foreign country or possession thereof, on a temporary basis to perform agricultural labor;

* * * * * * *

(5) Service performed in the employ of the United States or any instrumentality of the United States, if such service—

(A) would be excluded from the term "employment" for purposes of this title if the provisions of subparagraphs (5) and (6) of this subsection as in affect in January 1983 had remained in effect, and

(B) is performed by an individual who (i) has been continuously *performing service which is excluded from the term "employment"* in the employ of the United States or an instrumentality thereof since December 31, 1983 (and for this purpose an individual who returns to the performance of such service after being separated therefrom following a previous period of such service shall nevertheless be considered upon such return as having been continuously in the employ of the United States or an instrumentality thereof, regardless of whether the period of such separation began before, on, or after December 31, 1983, if the period of such separation does not exceed 365 consecutive days), or (ii) is receiving an annuity from the Civil Service Retirement and Disability Fund, or benefits (for service as an employee) under another retirement system established by a law of the United States for employees of the Federal Government (other than for members of the uniformed services);

* * * * * * *

(7) Service performed in the employ of a State, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned thereby, except that this paragraph shall not apply in the case of—

(A) service included under an agreement under section 218,

[THE INDENTATIONS OF THE FOLLOWING SUBPARAGRAPH ARE REALIGNED BY THE BILL TO CONFORM TO THE PRECEDING SUBPARAGRAPHS]

(D) service performed in the employ of the District of Columbia or any instrumentality which is wholly owned thereby, if such service is not covered by a retirement system established by a law of the United States; except that the provisions of this subparagraph shall not be applicable to service performed—

(i) in a hospital or penal institution by a patient or inmate thereof;

(ii) by any individual as an employee included under section 5351(2) of title 5, United States Code (relating to certain interns, student nurses, and other student employees of hospitals of the District of Columbia Government), other than as a medical or dental intern or as a medical or dental resident in training;

(iii) by any individual as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or other similar emergency; or

(iv) by a member of a board, committee, or council of the District of Columbia, paid on a per diem, meeting, or other fee basis, or

* * * * * * *

(9) Service performed by an individual as an employee or employee representative as defined in [section 1532 of the Internal Revenue Code] *section 3231 of the Internal Revenue Code of 1954*;

(10) Service performed in the employ of—

(A) a school, college, or university, or

(B) an organization described in section 509(a)(3) of the Internal Revenue Code of 1954 if the organization is organized, and at all times thereafter is operated, exclusively for the benefit of, to perform the functions of, or to carry out the purposes of a school, college, or university and is operated, supervised, or controlled by or in connection with such school, college, or university, unless it is a school, college, or university of a State or a political subdivision thereof and the services in its employ performed by a student referred to in section 218(c)(5) are covered under the agreement between the Secretary [of Health, Education, and Welfare] and such State entered into pursuant to section 218;

if such service is performed by a student who is enrolled and regularly attending classes at such school, college, or university;

* * * * * * *

(19) Service which is performed by a nonresident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of section 101(a)(15) of the Immigration and Nationality Act, as amended, and which is performed to carry out the purpose specified in subparagraph (F) or (J), as the case may be; or[,]

* * * * * * *

Service in the Uniformed Services

(l) (1) Except as provided in paragraph (4), the term "employment" shall, notwithstanding the provisions of subsection (a) of this section, include service performed after December 1956 by an individual as a member of a uniformed service on active duty; but such term shall not include any such service which is performed while on leave without pay.

(2) The term "active duty" means "active duty" as described in [section 102 of the Servicemen's and Veterans' Survivor Benefits Act] *paragraph (21) of section 101 of title 38, United States Code,*

except that it shall also include "active duty for training" as described in *paragraph (22) of* such section.

(3) The term "inactive duty training" means "inactive duty training" as described in [such section 102] *paragraph (23) of such section 101.*

(4)(A) Paragraph (1) of this subsection shall not apply in the case of any service, performed by an individual as a member of a uniformed service, which is creditable under section 3(i) of the Railroad Retirement Act of 1974. The Railroad Retirement Board shall notify the Secretary [of Health, Education, and Welfare], with respect to all such service which is so creditable.

* * * * * * *

Member of a Uniformed Service

(m) The term "member of a uniformed service" means any person appointed, enlisted, or inducted in a component of the Army, Navy, Air Force, Marine Corps, or Coast Guard (including [a reserve component of a uniformed service as defined in section 102(3) of the Servicemen's and Veterans' Survivor Benefits Act] *a reserve component as defined in section 111(27) of title 38, United States Code*), or in one of those services without specification of component, or as a commissioned officer of the Coast and Geodetic Survey, *the National Oceanic and Atmospheric Administration Corps,* of the Regular or Reserve Corps of the Public Health Service, and any person serving in the Army or Air Force under call or conscription. The term includes—

(1) a retired member of any of these services;

(2) a member of the Fleet Reserve or Fleet Marine Corps Reserve;

(3) a cadet at the United States Military Academy, a midshipman at the United States Naval Academy, and a cadet at the United States Coast Guard Academy or United States Air Force Academy;

(4) a member of the Reserve Officers' Training Corps, the Naval Reserve Officers' Training Corps, or the Air Force Reserve Officers' Training Corps, when ordered to annual training duty for fourteen days or more, and while performing authorized travel to and from that duty; and

(5) any person while en route to or from, or at, a place for final acceptance or for entry upon active duty in the [military or naval] *military, naval, or air* service—

(A) who has been provisionally accepted for such duty; or

(B) who, under the [Universal Military Training and Service Act], *Military Selective Service Act,* has been selected for active [military or naval] *military, naval, or air* service;

and has been ordered or directed to proceed to such place. The term does not include a temporary member of the Coast Guard Reserve.

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SELF-EMPLOYMENT

SEC. 211. For the purposes of this title—

Net Earnings From Self-Employment

(a) The term "net earnings from self-employment" means the gross income, as computed under [chapter 1 of the Internal Revenue Code] *subtitle A of the Internal Revenue Code of 1954*, derived by an individual from any trade or business carried on by such individual, less the deductions allowed under [such chapter] *such subtitle* which are attributable to such trade or business, plus has distributive share (whether or not distributed) of the ordinary net income or loss, as computed under [section 183 of such code] *section 702(a)(8) of such Code*, from any trade or business carried on by a partnership of which he is a member; except that in computing such gross income and deductions and such distributive share of partnership ordinary net income or loss—

(1) * * *

* * * * * * *

(3) There shall be excluded any gain or loss (A) which is considered under [chapter 1 of the Internal Revenue Code] *subtitle A of the Internal Revenue Code of 1954* as gain or loss from the sale or exchange of a capital asset, (B) from the cutting of timber, or the disposal of timber, coal, or iron ore, if section 631 of the Internal Revenue Code of 1954 applies to such gain or loss, *or* (C) from the sale, exchange, involuntary conversion, or other disposition of property if such property is neither (i) stock in trade or other property of a kind which would properly be includible in inventory if on hand at the close of the taxable year, nor (ii) property held primarily for sale to customers in the ordinary course of the trade or business;

(4) The deduction for net operating losses provided in [section 23(s) of such code] *section 172 of the Internal Revenue Code of 1954* shall not be allowed;

* * * * * * *

If the taxable year of a partner is different from that of the partnership, the distributive share which he is required to include in computing his net earnings from self-employment shall be based upon the ordinary net income or loss of the partnership for any taxable year of the partnership (even though beginning prior to 1951) ending within or with his taxable year. In the case of any trade or business which is carried on by an individual or by a partnership and in which, if such trade or business were carried on exclusively by employees, the major portion of the services would constitute agricultural labor as defined in section 210(f)—

(i) * * *

* * * * * * *

(iii) in the case of a member of a partnership, if his distributive share of the gross income of the partnership derived from such trade or business (after such gross income has been reduced by the sum of all payments to which section 707(c) of the Internal Revenue Code of 1954 applies) is not more than

$2,400, his distributive share of income described in section [702(a)(9)] *702(a)(8)* of such Code derived from such trade or business may, at his option, be deemed to be an amount equal to 66⅔ percent of his distributive share of such gross income (after such gross income has been so reduced); or

(iv) in the case of a member of a partnership, if his distributive share of the gross income of the partnership derived from such trade or business (after such gross income has been reduced by the sum of all payments to which section 707(c) of the Internal Revenue Code of 1954 applies) is more than $2,400 and his distributive share (whether or not distributed) of income described in section [702(a)(9)] *702(a)(8)* of such Code derived from such trade or business (computed under this subsection without regard to this sentence) is less than $1,600, his distributive share of income described in such section [702(a)(9)] *702(a)(8)* derived from such trade or business may, at his option, be deemed to be $1,600.

* * * * * * *

Self-Employment Income

(b) The term "self-employment income" means the net earnings from self-employment derived by an individual (other than a nonresident alien individual, except as provided by an agreement under section 223) during any taxable year beginning after 1950; except that such term shall not include—

(1) That part of the net earnings from self-employment which is in excess of—

(A) For any taxable year ending prior to 1955, (i) $3,600, minus (ii) the amount of the wages paid to such individual during the taxable year; and

* * * * * * *

[THE INDENTATIONS OF THE FOLLOWING SUBPARAGRAPHS ARE REALIGNED BY THE BILL TO CONFORM TO THE PRECEDING SUBPARAGRAPHS.]

(D) For any taxable year ending after 1965 and prior to 1968, (i) $6,600, minus (ii) the amount of the wages paid to such individual during the taxable year; and

* * * * * * *

(G) For any taxable year beginning after 1972 and prior to 1974, (i) $10,800, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(H) For any taxable year beginning after 1973 and prior to 1975, (i) $13,200, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(I) For any taxable year beginning in any calendar year after 1974, (i) an amount equal to the contribution and benefit base (as determined under section 230) which is effective for such calendar year, minus (ii) the amount of the wages paid to such individual during such taxable year; or

(2) The net earnings from self-employment, if such net earnings for the taxable year are less than $400.

* * * * * * *

Trade or Business

(c) The term "trade or business", when used with reference to self-employment income or net earnings from self-employment, shall have the same meaning as when used in [section 23 of the Internal Revenue Code] *section 162 of the Internal Revenue Code of 1954*, except that such term shall not include—

(1) * * *

* * * * * * *

(3) The performance of service by an individual as an employee or employee representative as defined in [section 1532 of the Internal Revenue Code]; *section 3231 of the Internal Revenue Code of 1954*;

* * * * * * *

Partnership and Partner

(d) The term "partnership" and the term "partner" shall have the same meaning as when used in [supplement F of chapter 1 of the Internal Revenue Code] *subchapter K of chapter 1 of the Internal Revenue Code of 1954*.

Taxable Year

(e) The term "taxable year" shall have the same meaning as when used in [chapter 1 of the Internal Revenue Code] *subtitle A of the Internal Revenue Code of 1954*; and the taxable year of any individual shall be a calendar year unless he has a different taxable year for the purposes of [chapter 1 of such code] *subtitle A of such code*, in which case tax taxable year for the purposes of this title shall be the same as his taxable year under [such chapter 1] *such subtitle A*.

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QUARTER AND QUARTER OF COVERAGE

Definitions

SEC. 213. (a) For the purposes of this title—

(1) The term "quarter", and the term "calendar quarter", [means] *mean* a period of three calendar months ending on March 31, June 30, September 30, or December 31.

(2)(A) * * *

(B) Notwithstanding the provisions of subparagraph (A)—

(i) no quarter after the quarter in which an individual dies shall be a quarter of coverage, and no quarter any part of which is included in a period of disability (other than the initial quarter and the last quarter of such period) shall be a quarter of coverage;

(ii) if the wages paid to an individual in any calendar year equal [to] $3,000 in the case of a calendar year before 1951, or $3,600 in the case of a calendar year after 1950 and before 1955, or $4,200 in the case of a calendar year after 1954 and before 1959, or $4,800 in the case of a calendar year after 1958 and before 1966, or $6,600 in the case of a calendar year after 1965 and before 1968, or $7,800 in the case of a calendar year after 1967 and before 1972, or $9,000 in the case of a calendar year after 1972, or $10,800 in the case of calendar year 1973, or $13,200 in the case of the calendar year 1974, or an amount equal to the contribution and benefit base (as determined under section 230) in the case of any calendar year after 1974 and before 1978 with respect to which such contribution and benefit base is effective, each quarter of such year shall (subject to clauses (i) and (v)) be a quarter of coverage;

* * * * * * *

COMPUTATION OF PRIMARY INSURANCE AMOUNT

SEC. 215. For the purposes of this title—

Primary Insurance Amount

(a)(1)(A)* * *

(B)(i) For individuals who initially become eligible for old-age or disability insurance benefits, or who die (before becoming eligible [of] *for* such benefits), in the calendar year 1979, the amount established for purposes of clause (i) and (ii) of subparagraph (A) shall be $180 and $1,085, respectively.

* * * * * * *

(iii) Each amount established under clause (ii) for any calendar year shall be rounded to the nearest $1, except that any [amounts] *amount* so established which is a multiple of $0.50 but not of $1 shall be rounded to the next higher $1.

(C)(i) No primary insurance amount computed under subparagraph (A) may be less than an amount equal to $11.50 multiplied by the individual's years of coverage in excess of 10, or the increased amount determined for purposes of this clause under subsection (i).

(ii) For purposes of clause (i), the term "years of coverage" with respect to any individual means the number (not exceeding 30) equal to the sum of (I) the number (not exceeding 14 and disregarding any fraction) determined by dividing (a) the total of the wages credited to such individual (including wages deemed to be paid prior to 1951 to such individual under section 217, compensation under the Railroad Retirement Act of 1937 prior to 1951 which is creditable to such individual pursuant to this title, and wages deemed to be paid prior to 1951 to such individual under section 231) for years after 1936 and before 1951 by (b) $900, plus (II) the number equal to the number of years after 1950 each of which is a computation base year (within the meaning of subsection (b)(2)(B)(ii) and in each of which he is credited with wages (including wages deemed to paid to such individual under [scetion] *section* 217, compensation under the Railroad Retirement Act of 1937 or 1974 which is creditable to such individual pursuant to this title and wages deemed to be paid to such individual under section 229) and self-employment income of not less than 25 percent of the maximum amount which, pursuant to subsection (e), may be counted for such year, or of not less than 25 percent of the maximum amount which could be so counted for such year (in the case of a year after 1977) if section 230 as in effect immediately prior to the enactment of the Social Security Amendments of 1977 had remained in effect without change.

* * * * * * *

(2)(A) A year shall not be counted as the year of an individual's death or eligibility for purposes of this subsection or subsection (i) in any case where such individual was entitled to a disability insurance benefit for any of the 12 months immediately preceding the month of such death or eligibility (but there shall be counted instead the year of the individual's eligibility for the disability insurance benefit or benefits to which he was entitled during such 12 months).

(B) In the case of an individual who was entitled to a disability insurance benefit for any of the 12 months before the month in which he became entitled to an old-age insurance benefit, became reentitled to a disability insurance benefit, or died, the primary insurance amount for determining any benefit attributable to that entitlement, reentitlement, or death is the greater of—

(i) the primary insurance amount upon which such disability insurance benefits was based, increased by the amount of each general benefit increase (as defined in subsection (i)(3)), and each increase provided under subsection (i)(2), that would have applied to such primary insurance amount had the individual remained entitled to such disability insurance benefit until the month in which [he] *he or she* became so entitled or reentitled or died, or

(ii) the amount computed under paragraph (1)(C).

* * * * * * *

(3)(A) * * *

(B) For purposes of this title, an individual is deemed to be eligible—

(i) for old-age insurance benefits, for months beginning with the month in which [he] *he or she* attain age 62, or

(ii) for disability insurance benefits, for months beginning with the month in which [his] *his or her* period of disability began as provided under section 216(i)(2)(C),

except as provided in paragraph (2)(A) in cases where fewer than 12 months have elapsed since the termination of a prior period of disability.

(4) Paragraph (1) (except for subparagraph (C)(i) thereof) does not apply to the computation or recomputation of a primary insurance amount for—

(A) an individual who was eligible for a disability insurance benefit for a month prior to January 1979 unless, prior to the month in which occurs the event described in clause (i), (ii), or (iii) of paragraph (3)(A), there occurs a period of at least 12 consecutive months for which [he] *he or she* was not entitled to a disability insurance benefit, or

[THE INDENTATIONS OF TH FOLLOWING SUBPARAGRAPH AND CLAUSES ARE REALIGNED BY THE BILL TO CONFROM TO THE PRECEDING SUBPARAGRAPH.]

(B) an individual who had wages or self-employment income credited for one or more years prior to 1979, and who was not eligible for an old-age or disability insurance benefit, and did not die, prior to January 1979, if in the year for which the computation or recomputation would be made the individual's primary insurance amount would be greater if computed or recomputed—

(i) under section 215(a) as in effect in December 1978, for purposes of old-age insurance benefits in the case of an individual who becomes eligible for such benefits prior to 1984, or

(ii) as provided by section 215(d), in the case of an individual to whom such section applies.

* * * * * * *

(7)(A) * * *

(B)(i) * * *

(ii) For purposes of clause (i), the percent specified in this clause is—

(I) 80.0 percent with respect to individuals [who initially become eligible for old-age or disability insurance benefits] *who become elgibile (as defined in paragraph (3)(B)) for old-age insurance benefits (or became eligible as so defined for disability insurance benefits before attaining age 62)* in 1986;

* * * * * * *

(C)(i) * * *

(ii) In the case of an individual who has elected to receive a periodic payment that has been reduced so as to provide a [survivors] *survivor's* benefit to any other individual, the payment shall be deemed to be increased (for purposes of any computation under this paragraph or subsection (d)(5)) by the amount of such reduction.

* * * * * * *

Average Indexed Monthly Earnings; Average Monthly Wage

(b)(1) An individual's average indexed monthly earnings shall be equal to the quotient obtained by dividing—

(A) the total (after adjustment under paragraph (3)) of [his] *his or her* wages paid in and self-employment income credited to [his] *his or her* benefit computation years (determined under paragraph (2)), by

(B) the number of months in those years.

(2)(A) The number of an individual's benefit computation years equals the number of elapsed years reduced—

(i) in the case of an individual who is entitled to old-age insurance benefits (except as provided in the second sentence of this subparagraph), or who has died, by 5 years, and

(ii) in the case of an individual who is entitled to disability insurance benefits, by the number of years equal to one-fifth of such individual's elapsed years (disregarding any resulting fractional part of a year), but not by more than 5 years.

Clause (ii), once applicable with respect to any individual, shall continue to apply for purposes of determining such individual's primary insurance amount of purposes of any subsequent eligibility for disability or old-age insurance benefits unless prior to the month in which such eligibility begins there occurs a period of at least 12 consecutive months for which [he] *he or she* was not entitled to a disability of an old-age insurance benefit.

* * * * * * *

(B) For purposes of this subsection with respect to any individual—

(i) the term "benefit computation years" means those computation base years, equal in number to the number determined under subparagraph (A), for which the total of such individual's wages and self-employment income, after adjustment under paragraph (3), is the largest;

(ii) the term "computation base years" means the calendar years after 1950 and before—

(I) in the case of an individual entitled to old-age insurance benefits, the year in which occurred (whether by reason of section 202(j)(1) or otherwise) the first month of that entitlement; or

(II) in the case of an individual who has died (without having become entitled to old-age insurance benefits), the year succeeding the year of [his] *his or her* death;

* * * * * * *

(3)(A) Except as provided by subparagraph (B), the wages paid in and self-employment income credited to each of an individual's computation base years for purposes of the selection therefrom of benefit computation years under paragraph (2) shall be deemed to be equal to the product of—

(i) the wages and self-employment income paid in or credited to such year (as determined without regard to this subparagraph), and

(ii) the quotient obtained by dividing—

(I) the average of the total wages (as defined in regulations of the Secretary and computed without regard to the limitations specified in section 209(a)) reported to the Secretary of the Treasury or his delegate for the second calendar year (after 1976) preceding the earliest of the year of the individual's death, eligibility for an old-age insurance benefit, or eligibility for a disability insurance benefit (except that the year in which the individual dies, or becomes eligible, shall not be considered as such year if the individual was entitled to disability insurance benefits for any month in the 12-month period immediately preceding such death or eligibility, but there shall be counted instead the year of the individual's eligibility for the disability insurance benefit to which [he] *he or she* was entitled in such 12-month period), by

(II) the average of the total wages (as so defined and computed) reported to the Secretary of the Treasury or his delegate for the computation base year for which the determination is made.

* * * * * * *

(4) For purposes of determining the average monthly wage of an individual whose primary insurance amount is computed (after 1978) under section 215(a) and 215(d) as in effect (except with respect to the table contained therein) in December 1978, by reason of subsection (a)(4)(B), this subsection as in effect in December 1978 shall remain in effect, except that paragraph (2)(C) (as then in effect) shall be deemed to provide that "computation base years" include only calendar years in the period after 1950 (or 1936, if applicable) and prior to the year in which occurred the first month for which the individual was eligible (as defined in subsection (a)(3)(B) as in effect in January 1979) for an old-age or disability insurance benefit, or, if earlier, the year in which [he] *he or she* died. Any calendar year all of which is included in a period of disability shall not be included as a computation base year for such purposes.

* * * * * * *

Primary Insurance Benefit Under 1939 Act

(d)(1) For purposes of column I of the table appearing in subsection (a), as that subsection was in effect in December 1977, an individual's primary insurance benefit shall be computed as follows:

(A) * * *

* * * * * * *

(C) For the purposes of subparagraph (B), "total wages prior to 1951" with respect to an individual means the sum of (i) remuneration credited to such individual prior to 1951 on the records of the Secretary, (ii) wages deemed paid prior to 1951 to such individual under section 217, (iii) compensation under the Railroad Retirement Act of 1937 prior to 1951 creditable to [him] *such individual* pursuant to this title, and (iv) wages deemed paid prior to 1951 to such individual under section 231.

* * * * * * *

Certain Wages and Self-Employment Income Not To Be Counted

(e) For the purposes of subsections (b) and (d)—

(1) in computing an individual's average indexed monthly earnings or, in the case of an individual whose primary insurance amount is computed under section 215(a) as in effect prior to January 1979, average monthly wage, there shall not be counted the excess over $3,600 in the case of any calendar year after 1950 and before 1955, the excess over $4,200 in the case of any calendar year after 1954 and before 1959, the excess over $4,800 in the case of any calendar year after 1958 and before

1966, the excess over $6,600 in the case of any calendar year after 1965 and before 1968, the excess over $7,800 in the case of any calendar year after 1967 and before 1972, the excess over $9,000 in the case of any calendar year after 1971 and before 1973, the excess over $10,800 in the case of any calendar year after 1972 and before 1974, the excess over $13,200 in the case of any calendar year after 1973 and before 1975, and the excess over an amount equal to the contribution and benefit base (as determined under section 230) in the case of any calendar year after 1974 with respect to which such contribution and benefit base is effective, (before the application, in the case of average indexed monthly earnings, of subsection (b)(3)(A)) of (A) the wages paid to [him] *such individual* in such year, plus (B) the self-employment income credited to such year (as determined under section 212); and

* * * * * * *

Recomputation of Benefits

(f)(1) After an individual's primary insurance amount has been determined under this section, there shall be no recomputation of such individual's primary insurance amount except as provided in this subsection or, in the case of a World War II veteran who died prior to July 27, 1954, as provided in section 217(b).

(2)(A) If an individual has wages or self-employment income for a year after 1978 for any part of which [he] *he or she* is entitled to old-age or disability insurance benefits, the Secretary shall, at such time or times and within such period as [he] *the Secretary* may by regulation prescribe, recompute the individual's primary insurance [account] *amount* for that year.

* * * * * * *

(D) A recomputation under this paragraph with respect to any year shall be effective—

(i) in the case of an individual who did not die in that year, for monthly benefits beginning with benefits for January of the following year; or

(ii) in the case of an individual who died in that year, for monthly benefits beginning with benefits for the month in which [he] *he or she* died.

* * * * * * *

(9)(A) In the case of an individual who becomes entitled to a periodic payment determined under subsection (a)(7)(A) (including a payment determined under subsection (a)(7)(C)) in a month subsequent to the first month in which he or she becomes entitled to an old-age or disability insurance benefit, and whose primary insurance amount has been computed without regard to either such subsection or subsection (d)(5), such individual's primary insurance amount shall be recomputed (notwithstanding paragraph (4) of this subsection), in accordance with either such subsection or subsection (d)(5), as may be applicable, effective with the first month of his or her concurrent entitlement to such benefit and such periodic payment.

(B) If an individual's primary insurance amount has been computed under subsection (a)(7) or (d)(5), and it becomes necessary to recompute that primary insurance amount under this subsection—

(i) so as to increase the monthly benefit amount payable with respect to such primary insurance amount (except in the case of the individual's death), such increase shall be determined [as though such primary insurance amount had initially been computed without regard to subsection (a)(7) or (d)(5)] *as though the recomputed primary insurance amount were being computed under subsection (a)(7) or (d)(5),*

* * * * * * *

(ii) by reason of the individual's death, such primary insurance amount shall be recomputed without regard to (and as though it had never been computed with regard to) subsection (a)(7) or (d)(5).

* * * * * * *

Service of Certain Public Health Service Officers

(h)(1) Notwithstanding the provisions of subchapter III of chapter 83 of title 5, United States Code, remuneration paid for service to which the provisions of section 210(l)(1) of this Act are applicable and which is performed by an individual as a commissioned officer of the Reserve Corps of the Public Health Service prior to July 1, 1,960, shall not be included in computing entitlement to or the amount of any monthly benefit under this title, on the basis of his wages and self-employment income, for any month after June 1960 and prior to the first month with respect to which the [Civil Service Commission] *Director of the Office of Personnel Management* certifies to the Secretary that, by reason of a waiver filed as provided in paragraph (2), no further annuity will be paid to him, his wife, and his children, or, if he has died, to his widow and children, under subchapter III of chapter 83 of title 5, United States Code, on the basis of such service.

(2) In the case of a monthly benefit for a month prior to that in which the individual, on whose wages and self-employment income such benefit is based, dies, the waiver must be filed by such individual; and such waiver shall be irrevocable and shall constitute a waiver on behalf of himself, his wife, and his children. If such individual did not file such a waiver before he died, then in the case of a benefit for the month in which he died or any month thereafter, such waiver must be filed by his widow, if any, and by or on behalf of all his children, if any; and such waivers shall be irrevocable. Such a waiver by a child shall be filed by his legal guardian or guardians, or, in the absence thereof, by the person (or persons) who has the child in his care.

Cost-of-Living Increases in Benefits

(i)(1) For purposes of this subsection—

* * * * * * *

(5)(A) If—

(i) with respect to any calendar year the "applicable increase percentage" was determined under clause (ii) of paragraph (1)(C) rather than under clause (i) of such paragraph, and the increase becoming effective under paragraph (2) in such year was accordingly determined on the basis of the wage increase percentage rather than the CPI increase percentage (or there was no such increase becoming effective under paragraph (2) in that year because the wage increase percentage was less than 3 percent), and

(ii) for any subsequent calendar year in which an increase under paragraph (2) becomes effective the OASDI fund ratio is greater than 32.0 percent,

then each of the amounts described in subdivisions (I), (II), and (III) of paragraph (2)(A)(ii), as increased under paragraph (2) effective with the month of December in such subsequent calendar year, shall be further increased (effective with such month) by an additional percentage, which shall be determined under subparagraph (B) and shall apply as provided in subparagraph (C). *Any amount so increased that is not a multiple of $0.10 shall be decreased to the next lower multiple of $0.10.*

(B) The applicable additional percentage by which the amounts described in subdivisions (I), (II), and (III) of paragraph (2(A)(ii) are to be further increased under subparagraph (A) in the subsequent calendar year involved shall be the amount derived by—

(i) subtracting (I) the compounded percentage benefit increases that were actually paid under paragraph (2) and this paragraph from (II) the compounded percentage benefit increases that would have been paid if all increases under paragraph (2) had been made on the basis of the CPI increase percentage,

(ii) dividing the difference by the sum of the compounded percentage in subdivision (I) and 100 percent, and

[(iii) multiplying such quotient by 100 and rounding to the nearest one-tenth of 1 percent,]

(iii) multiplying such quotient by 100 so as to yield such applicable additional percentage (which shall be rounded to the nearest one-tenth of 1 percent),

with the compounded increases referred to in subdivisions (I) and (II) being measured—

(iv) in the case of amounts described in subdivision (I) of paragraph (2)(A)(ii), over the period beginning with the calendar year in which monthly benefits described in such subdivision were first increased on the basis of the wage increase percentage and [ending with such subsequent calendar year] *ending with the year before such subsequent calendar year,* and

(v) in the case of amounts described in subdivisions (II) and (III) of paragraph (2)(A)(ii), over the period beginning with the calendar year in which the individual whose primary insurance amount is increased under such subdivision (II) [initially became eligible for an old-age or disability insurance benefit] *became eligible (as defined in subsection (a)(3)(B)) for the old-age or disability insurance benefit that is being increased under this subsection,* or died before becoming so eligible, and [ending with such subsequent calendar year] *ending with the year before such subsequent calendar year*;

except that if the Secretary determines in any case that the application (in accordance with subparagraph (C)) of the additional percentage as computed under the preceding provisions of this subparagraph would cause of OASDI fund ratio to fall below 32.0 percent in the calendar year immediately following such subsequent year, he shall reduce such applicable additional percentage to the extent necessary to ensure that the OASDI fund ratio will remain at or above 32.0 percent through the end of such following year.

* * * * * * *

OTHER DEFINITIONS

SEC. 216. For the purposes of this title—

Spouse; Surviving Spouse

(a) * * *

* * * * * * *

Husband

(f) The term "husband" means the husband of an individual, but only if (1) he is the father of her son or daughter, (2) he was married to her for a period of not less than one year immediately preceding the day on which his application is filed, or (3) in the month prior to the month of his marriage to her (A) he was entitled to, or on application therefor and attainment of age 62 in such prior month would have been entitled to, benefits under subsection (c), (f) or (h) of section 202, (B) he had attained age eighteen and was entitled to, or on application therefor would have been entitled to, benefits under subsection (d) of such section (subject, however, to section 202(s)), or (C) he was entitled to, or upon application therefor and attainment of the required age (if any) he would have been entitled to, a widower's, child's (after attainment of age 18), or parent's insurance annuity under section 2 of the Railroad Retirement Act of 1974, as amended. For purposes of clause (2), a husband shall be deemed to have been married to an individual for a period of one year throughout the month in which occurs the first anniversary of his marriage to her. *For purposes of subparagraph (C) of section 202(c)(1), a divorced husband shall be deeemd not to be married throughout the month in which he becomes divorced.*

* * * * * * *

Determination of Family Status

(h)(1) * * *

* * * * * * *

(3) An applicant who is the son or daughter of a fully or currently insured individual, but who is not (and is not deemed to be) the child of such insured individual under paragraph (2), shall nevertheless be deemed to be the child of such insured individual if:

(A) in the case of an insured individual entitled to old-age insurance benefits (who was not, in the month preceding such entitlement, entitled to disability insurance benefits)—

(i) such insured individual—

(I) has acknowledged in writing that the applicant is his or her son or daughter,

(II) has been decreed by a court to the mother or father of the applicant, or

(III) has been ordered by a court to contribute to the support of the applicant because the applicant is his or her son or daughter,

and such acknowledgement, court decree, or court order was made not less than one year before such insured individual became entitled to old-age insurance benefits or attained retirement age **[**as defined in section 216(l)**]** *(as defined in subsection (l))* whichever is earlier; or

* * * * * * *

Disability; Period of Disability

(i) (1) Except for purposes of sections 202(d), 202(e), 202(f), 223, and 225, the term "disability" means (A) inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continous period of not less than 12 months, or (B) blindness; and the term "blindness" means central visual acuity of 20/200 or less in the better eye with the use of a correcting lens. An eye which is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered for purposes of this paragraph as having a central visual acuity of 20/200 or less. The provisions of paragraphs (2)(A), *(2)(c)*, (3), (4), (5), and (6) of section 223(d) shall be applied for purposes of determining whether an individual is under a disability within the meaning of the first sentence of this paragraph in the same manner as they are applied for purposes of paragraph (1) of such section. Nothing in this title shall be construed as authorizing the Secretrary or any other officer or employee of the United States to interfere in any way with the practice of medicine or with relationships between practioners of medicine and their patients, or to exercise any supervision or control over the administration or operation of any hospital.

(2)(A) the term "period of disability" means a continuous period (beginning and ending as hereinafter provided in this subsection) during which an individual was under a disability (as defined in paragraph (1)), but only if such period is of not less than five full calendar months' duration or such individual was entitled to benefits under section 223 for one or more months in such period.

(B) No period of disability shall begin as to any individual unless such individual files an application for a disability determination with respect to such period; and no such period shall begin as to any individual after such individual attains the retirement age **[**(as defined in section 216(l)**]** *(as defined in subsection (l))*. In the case of a deceased individual, the requirement of an application under the preceding sentence may be satisfied by an application for a disability determination filed with respect to such individual within 3 months after the month in which he died.

(C) A period of disability shall begin—

(i) on the day the disability began, but only if the individual satisfies the requirements of paragraph (3) on such day; or

(ii) if such individual does not satisfy the requirements of paragraph (3) on such day, then on the first day of the first quarter thereafter in which he satisfies such requirements.

(D) A period of disability shall end with the close of whichever of the following months is the earlier: (i) the month preceding the month in which the individual attains retirement age [(as defined in section 216(l))] *(as defined in subsection (l))*, or (ii) the month preceding (I) the termination month (as defined in section 223(a)(1)), or, if earlier (II) the first month for which no benefit is payable by reason of section 223(e), where no benefit is payable for any of the succeeding months during the 15-month period referred to in such section. *A period of disability may be determined to end on the basis of a finding that the physical or mental impairment on the basis of which the finding of disability was made has ceased, does not exist, or is not disabling only if such finding is supported by substantial evidence described in paragraph (1), (2), or (3) of section 223(f). Nothing in the preceding sentence shall be construed to reqire a determination that a period of disability continues if evidence on the record at the time any prior determination of such period of disability was made, or new evidence which relates to such determination, shows that the prior determination was either clearly erroneous at the time it was made or was fraudulently obtained, or if the individual is engaged in substantial gainful activity. In any case in which there is no available medical evidence supporting a prior disability determination, nothing in this subparagraph shall preclude the Secretary, in attempting to meet the requirements of the preceding provisions of this subparagraph, from securing additional medical reports necessary to reconstruct the evidence which supported such prior disability determination.*

* * * * * * *

(F) An application for a disability determination which is filed more than 12 months after the month prescribed by subparagraph (D) as the month in which the period of disability ends (determined without regard to subparagraphs (B) and (E)) shall be accepted as an application for purposes of this paragraph if—

(i) * * *

(ii) in the case of an application filed by or on behalf of an individual with respect to a period of disability which ends in or before the month in which the Social Security Amendments of 1967 is [enacted,] *enacted—*

(I) such application is filed not more than 12 months after the month in which the Social Security Amendments of 1967 is enacted,

(II) a previous application for a disability determination has been filed by or on behalf of such individual (1) in or before the month in which the Social Security Amendments of 1967 is enacted, and (2) not more than 36 months after the month in which his disability ended, and

(III) the Secretary finds in accordance with regulations prescribed by him, that the failure of such individual to file an application within the then specified time period was attributable to a physical or mental condition of such individual which rendered him incapable of executing such an application.

* * * * * * *

BENEFITS IN CASE OF VETERANS

SEC. 217. (a)(1) * * *

(2) Upon application for benefits or a lump-sum death payment on the basis of the wages and self-employment income of any World War II veteran, the Secretary [of Health, Education, and Welfare] shall make a decision without regard to clause (B) of paragraph (1) of this subsection unless he has been notified by some other agency or instrumentality of the United States that, on the basis of the military or naval service of such veteran during World War II, a benefit described in clause (B) of paragraph (1) has been determined by such agency or instrumentality to be payble by it. If he has not been so notified, the Secretary [of Health, Education, and Welfare] shall then ascertain whether some other agency or wholly owned instrumentality of the United States has decided that a benefit described in clause (B) of paragraph (1) is payable by it. If any such agency or instrumentality has decided, or thereafter decides, that such a benefit is payable by it, it shall so notify the Secretary [of Health, Education, and Welfare,], and the Secretary shall certify no further benefits for payment or shall recompute the amount of any further benefits payable, as may be required by paragraph (1) of this subsection.

(3) Any agency or wholly owned instrumentality of the United States which is authorized by any law of the United States to pay benefits, or has a system of benefits which are based, in whole or in part, on military or naval service during World War II shall, at the request of the Secretary [of Health, Education, and Welfare,], certify to him, with respect to any veteran, such information as the Secretary deems necessary to carry out his functions under paragraph (2) of this subsection.

(b)(1) * * *

(2) Upon an application for benefits or a lump-sum death payment on the basis of the wages and self-employment income of any World War II veteran, the Secretary [of Health, Education, and Welfare] shall make a decision without regard to paragraph (1)(B) of this subsection unless he has been notified by the Veterans' Administration that pension or compensation is determined to be payable by the Veterans' Administration by reason of the death of such veteran. The Secretary [of Health, Education, and Welfare] shall thereupon report such decision to the Veterans' Administration. If the Veterans' Administration in any such case has made an adjudication or thereafter makes an adjudication that any pension or compensation is payable under any law administered by it, it shall

notify the Secretary [of Health, Education, and Welfare,] and the Secretary shall certify no further benefits for payment, or shall recompute the amount of any further benefits payable, as may be required by paragraph (1) of this subsection. Any payment theretofore certified by the Secretary [of Health, Education, and Welfare] on the basis of paragraph (1) of this subsection to any individual, not exceeding the amount of any accrued pension or compensation payable to him by the Veterans' Administration, shall (notwithstanding the provisions of section 3101 of title 38, United States Code) be deemed to have been paid to him by such Administration on account of such accrued pension or compensation. No such payment certified by the Secretary [of Health, Education, and Welfare,], and no payment certified by him for any month prior to the first month for which any pension or compensation is paid by the Veterans' Administration shall be deemed by reason of this subsection to have been an erroneous payment.

* * * * * * *

[THE INDENTATIONS OF THE FOLLOWING SUBPARAGRAPHS (1) AND (2) ARE REALIGNED BY THE BILL]

(d) For the purposes of this section—

(1) The term "World War II" means the period beginning with September 16, 1940, and ending at the close of July 24, 1947.

(2) The term "World War II veteran" means any individual who served in the active military or naval service of the United States at any time during World War II and who, if discharged or released therefrom, was so discharged or released under conditions other than dishonorable after active service of ninety days or more or by reason of a disability or injury incurred or aggravated in service in line of duty; but such term shall not include any individual who died while in the active military or naval service of the United States if his death was inflicted (other than by an enemy of the United States) as lawful punishment for a military or naval offense.

(e) (1) For purposes of determining entitlement to and the amount of any monthly benefit lump-sum death payment payable under this title on the basis of the wages and self-employment income of any veteran (as defined in paragraph (4)), and for purposes of section 216(i)(3), such veteran shall be deemed to have been paid wages (in addition to the wages, if any, actually paid to him) of $160 in each month during any part of which he served in the active military or naval service of the United States on or after July 25, 1947, and prior to January 1, 1957. This subsection shall not be applicable in the case of any monthly benefit or lump-sum death payment if—

(A) a larger such benefit or payment, as the case may be, would be payable without its application; or

(B) a benefit (other than a benefit payable in a lump sum unless it is a commutation of, or a sutstitute for, periodic payments) which is based, in whole or in part, upon the active military or naval service of such veteran on or after July 25, 1947, and prior to January 1, 1957, is determined by any agency or wholly owned instrumentality of the United States (other than the Veterans' Administration) to be payable by it under any other law of the United States or under a system established by such agency or instrumentality.

The provisions of clause (B) shall not apply in the case of any monthly benefit or lump-sum death payment under this title if its application would reduce by $0.50 or less the primary insurance amount (as computed under section 215 prior to any recomputation thereof pursuant to subsection (f) of such section) of the individual on whose wages and self-employment income such benefit or payment is based. The provisions of clause (B) shall also not apply for purposes of section 216(i)(3). In the case of monthly benefits under this title for months after December 1956 (and any lump-sum death payment under this title with respect to a death occurring after December 1956) based on the wages and self-employment income of a veteran who performed service (as a member of a uniformed service) to which the provisions of section 210(l)(1) are applicable, wages which would, but for the provisions of clause (B), be deemed under this subsection to have been paid to such veteran with respect to his active military or naval service performed after December 1950 shall be deemed to have been paid to him with respect to such service notwithstanding the provision of such clause, but only if the benefits referred to in such clause which are based (in whole or in part) on such services are payable solely by the Army, Navy, Air Force, Marine Corps, Coast Guard, Coast and Geodetic Survey, *National Oceanic and Atmospheric Administration corps,* or public Health Service.

(2) Upon application for benefits or a lump-sum death payment on the basis of the wages and self-employment income of any veteran, the Secretary [of Health, Education, and Welfare] shall make a decision without regard to clause (B) of paragraph (1) of this subsection unless he has been notified by some other agency or instrumentality of the United States that, on the basis of the military or naval service of such veteran on or after July 25, 1947, and prior to January 1, 1957, a benefit described in clause (B) of paragraph (1) has been determined by such agency or instrumentality to be payable by it. If he has not been so notified, the Secretary [of Health, Education, and Welfare] shall then ascertain whether some other agency or wholly owned instrumentality of the United States has decided that a benefit described in clause (B) of paragraph (1) is payable by it. If any such agency or instrumentality has decided, or thereafter decides, that such a benefit is payable by it, it shall so notify the Secretary [of Health, Education, and Welfare,] and the Secretary shall certify no further benefits for payment or shall recompute the amount of any further benefits payable, as may be required by paragraph (1) of this subsection.

(3) Any agency or wholly owned instrumentality of the United States which is authorized by any law of the United States to pay benefits, or has a system of benefits which are based, in whole or in part, on military or naval service on or after July 25, 1947, and prior to January 1, 1957, shall, at the request of the Secretary [of Health, Education, and Welfare,] certify to him, with respect to

any veteran, such information as the Secretary deems necessary to carry out his funcitions under paragraph (2) of this subsection.

(f)(1) In any case where a World War II veteran (as defined in subsection (d)(2)) or a veteran (as defined in subsection (e)(4)) has died or shall hereafter die, and his or her surviving spouse or child is entitled under subchapter III of chapter 83 of title 5, United States Code, to an annuity in the computation of which his or her active military or naval service was included, clause (B) of subsection (a)(1) or clause (B) of subsection (e)(1) shall not operate (solely by reason of such annuity) to make such subsection inapplicable in the case of any monthly benefit under section 202 which is based on his or her wages and self-employment income; except that no such surviving spouse or child shall be entitled under section 202 to any monthly benefit in the computation of which such service is included by reason of this subsection (A) unless such surviving spouse or child after December 1956 waives his or her right to receive such annuity, or (B) for any month prior to the first month with respect to which the [Civil Service Commission] *Director of the Office of Personnel Management* certifies to the Secretary [of Health, Education, and Welfare] that (by reason of such waiver) no further annuity will be paid to such surviving spouse or child under such subchapter III on the basis of such veteran's military or civilian service. Any such waiver shall be irrevocable.

* * * * * * *

VOLUNTARY AGREEMENTS FOR COVERAGE OF STATE AND LOCAL EMPLOYEES

Purpose of Agreement

SEC. 218. (a)(1) The Secretary [of Health, Education, and Welfare] shall, at the request of any State, enter into an agreement with such State for the purpose of extending the insurance system established by this title to services performed by individuals as employees of such State or any political subdivision thereof. Each such agreement shall contain such provisions, not inconsistent with the provisions of this section, as the State may request.

* * * * * * *

Services Covered

(c)(1) * * *.

* * * * * * *

(4) The Secretary [of Health, Education, and Welfare] shall, at the request of any State, modify the agreement with such State so as to (A) include any coverage group to which the agreement did not previously apply, or (B) include, in the case of any coverage group to which the agreement applies, services previously excluded from the agreement; but the agreement as to modified may not be inconsistent with the provisions of this section applicable in the case of an original agreement with a State. A modification of an agreement pursuant to clause (B) of the preceding sentence may apply to individuals to whom paragraph (3)(B) is applicable (wheth-

er or not the previous exclusion of the service of such individuals was pursuant to such paragraph), but only if such individuals are, on the effective date specified in such modification, ineligible to be members of any retirement system or if the modification with respect to such individuals is pursuant to subsection (d)(3).

* * * * * * *

Positions Covered By Retirement Systems

(d) (1) * * *

* * * * * * *

(3) Notwithstanding paragraph (1), an agreement with a State may be made applicable (either in the original agreement or by any modification thereof) to service performed by employees in positions covered by a retirement system (including positions specified in paragraph (4) but not including positions excluded by pursuant to paragraph (5)), if the governor of the State, or an official of the State designated by him for the purpose, certifies to the Secretary [of Health, Education, and Welfare] that the following conditions have been met:

(A) A referendum by secret written ballot was held on the question of whether service in positions covered by such retirement system should be excluded from or included under an agreement under this section;

(B) An opportunity to vote in such referendum was given (and was limited) to eligible employees;

(C) Not less than ninety days' notice of such referendum was given to all such employees;

(D) Such referendum was conducted under the supervision of the governor or an agency or individual designated by him; and

(E) A majority of the eligible employees voted in favor of including service in such positions under an agreement under this section.

An employee shall be deemed an "eligible employee" for purposes of any referendum with respect to any retirement system if, at the time such referendum was held, he was in a position covered by such retirement system and was a member of such system, and if he was in such a position at the time notice of such referendum was given as required by clause (C) of the preceding sentence; except that he shall not be deemed an "eligible employee" if, at the time the referendum was held, he was in a position to which the State agreement already applied, or if he was in a position excluded by or pursuant to paragraph (5). No referendum with respect to a retirement system shall be valid for purposes of this paragraph unless held within the two-year period which ends on the date of execution of the agreement or modification which extends the insurance system established by this title to such retirement system, nor shall any referendum with respect to a retirement system be valid for purposes of this paragraph if held less than one year after the last previous referendum held with respect to such retirement system.

* * * * * * *

(7) The certification by the governor (or an official of the State designated by him for the purpose) required under paragraph (3) shall be deemed to have been made, in the case of a division or part (created under subparagraph (C) of paragraph (6) or the corresponding provision of prior law) consisting of the positions of members of a retirement system who desire coverage under the agreement under this section, if the governor (or the official so designated) certifies to the Secretary [of Health, Education, and Welfare] that—

(A) an opportunity to vote by written ballot on the question of whether they wish to be covered under an agreement under this section was given to all individuals who were members of such system at the time the vote was held;

(B) not less than ninety days' notice of such vote was given to all individuals who were members of such system on the date the notice was issued;

(C) the vote was conducted under the supervision of the governor or an agency or individual designated by him; and

(D) such system was divided into two parts or divisions in accordance with the provisions of subaragraphs (C) and (D) of paragraph (6) or the corresponding provision of prior law.

For purposes of this paragraph, an individual in a position to which the State agreement already applied or in a position excluded by or pursuant to paragraph (5) shall not be considered a member of the retirement system.

* * * * * * *

Deposits in Trust Fund; Adjustments

(h)(1) All amounts received by the Secretary of the Treasury under an agreement made pursuant to this section shall be deposited in the Trust Funds and the Federal Hospital Insurance Trust Fund in the ratio in which amounts are appropriated to such Funds pursuant to subsection (a)(3) of setion 201, subsection (b)(1) of such section, and subsection (a)(1) of section 1817, respectively.

(2) If more or less than the correct amount due under an agreement made pursuant to this section is paid with respect to any payment of remuneration, proper adjustments with respect to the amount due under such agreement shall be made, without interest, in such manner and at such times as may be prescribed by regulations of the Secretary [of Health, Education, and Welfare].

(3) If an overpayment cannot be adjusted under paragraph (2), the amount thereof and the time or times it is to be paid shall be certified by the Secretary [of Health, Education, and Welfare] to the Managing Trustee, and the Managing Trustee, through the Fiscal Service of the Treasury Department and prior to any action thereon by the General Accounting Office, shall make payent in accordance with such certification. The Managing Trustee shall not be held personally liable for any payment or payments made in ac-

cordance with a certification by the Secretary [of Health, Education, and Welfare].

Regulations

(i) Regulations of the Secretary [of Health, Education, and Welfare] to carry out the purposes of this section shall be designed to make the requirements imposed on States pursuant to this section the same, so far as practicable, as those imposed on employers pursuant to this title and [subchapter A or E of chapter 9 of the Internal Revenue Code] *chapter 21 and subtitle F of the Internal Revenue Code of 1954.*

Failure To Make Payments

(j) In case any State does not make, at the time or times due, the payments provided for under an agreement pursuant to this section, there shall be added, as part of the amounts due, interest at the rate of 6 per centum per annum from the date due until paid, and the Secretary [of Health, Education, and Welfare] may, in his discretion, deduct such amounts plus interest from any amounts certified by him to the Secretary of the Treasury for payment to such State under any other provision of this Act. Amounts so deducted shall be deemed to have been paid to the State under such other provision of this Act. Amounts equal to the amounts deducted under this subsection are hereby appropriated to the Trust Funds in the ratio in which amounts are deposited in such Funds pursuant to subsection (h)(1).

Instrumentalities of Two or More States

(k)(1) The Secretary [of Health, Education, and Welfare] may, at the request of any instrumentality of two or more States, enter into an agreement with such instrumentality for the purpose of extending the insurance system established by this title to services performed by individuals as employees of such instrumentality. Such agreement, to the extent practicable, shall be governed by the provisions of this section applicable in the case of an agreement with a State.

* * * * * * *

Delegation of Functions

(l) The Secretary [of Health, Education, and Welfare] is authorized, pursuant to agreement with the head of any Federal agency, to delegate any of his functions under this section to any officer or employee of such agency and otherwise to utilize the services and facilities of such agency in carrying out such functions, and payment therefor shall be in advance or by way of reimbursement, as may be provided in such agreement.

* * * * * * *

Policemen and Firemen in Certain States

(p)(1)* * *

(2) A State, not otherwise listed by name in paragraph (1), shall be deemed to be a State listed in such paragraph for the purpose of extending coverage under this title to service in firemen's positions covered by a retirement system, if the governor of the State, or an official of the State designated by him for the purpose, certifies to the Secretary [of Health, Education, and Welfare] that the overall benefit protection of the employees in such positions would be improved by reason of the extension of such coverage to such employees. Notwithstanding the provisions of the second sentence of such paragraph (1), such firemen's positions shall be deemed a separate retirement system and no other positions shall be included in such system.

* * * * * * *

Time Limitations on Assessments

(q)(1)* * *

* * * * * * *

(4) An assessment of an amount due made by the Secretary after the expiration of the period specified in paragraph (2) shall nevertheless be deemed to have been made within such period if—

(A) before the expiration of such period (or, if it has previously been extended under this paragraph, of such period as so extended), the State and the Secretary agree in writing to an extension of such period (or extended period) and, subject to such conditions as may be agreed upon, the Secretary makes the assessment prior to the expiration of such extension; or

(B) within the 365 days immediately preceding the expiration of such period (or extended period) the State pays to the Secretary of the Treasury less than the correct amount due under an agreement pursuant to this section with respect to wages paid to individuals in a calendar year as members of a coverage group, and the Secretary of [Health, Education, and Welfare] *Health and Human Services* makes the assessment, adjusted to take into account the amount paid by the State, no later than the 365th day after the day the State made payment to the Secretary of the Treasury; but the Secretary of [Health, Education, and Welfare] *Health and Human Services* shall make such assessment only with respect to the wages paid to such individuals in such calendar year as members of such coverage group; or

(C) pursuant to subparagraph (A) or (B) of section 205(c)(5) he includes in his records an entry with respect to wages for an individual, but only if such assessment is limited to the amount due with respect to such wages and is made within the period such entry could be made in such records under such subparagraph.

(6) The Secretary shall accept wage reports filed by a State under an agreement pursuant to this section or regulations of the Secretary thereunder, after the expiration of the period specified in paragraph (2) or such period as extended pursuant to paragraph (4), with respect to wages which are paid to individuals performing services as employees in a coverage group included in the agree-

ment and for payment in connection with which the State is not liable by reason of paragraph (2), only if the State—

(A) pays to the Secretary of the Treasury the amount due under such agreement with respect to such wages, and

(B) agrees in writing with the Secretary of [Health, Education, and Welfare] *Health and Human Services* to an extension of the period specified in paragraph (2) with respect to wages paid to all individuals performing services as employees in such coverage group in the period or periods designated by the State in such wage reports as the period or periods in which such wages were paid. If the State so agrees, the period specified in paragraph (2), or such period as extended pursuant to paragraph (4), shall be extended until such time as the Secretary notifies the State that such wage reports have been accepted.

* * * * * * *

Time Limitation on Credits and Refunds

(r)(1) No credit or refund of an overpayment by a State under an agreement pursuant to this section with respect to wages paid or alleged to have been paid to an individual as a member of a coverage group in a calendar year shall be allowed after the expiration of the latest of the following periods—

(A) three years, three months, and fifteen days after the year in which such wages were paid or alleged to have been paid, or

(B) three years after the date the payment which included such overpayment became due under such agreement with respect to the wages paid or alleged to have been paid to such individual as a member of such coverage group in such calendar year, or

(C) two years after such overpayment was made to the Secretary of the Treasury, or

(D) three years, three months, and fifteen days after the year following the year in which this subsection is enacted,

unless prior to the expiration of such period a claim for such credit or refund is filed with the Secretary of [Health, Education, and Welfare] *Health and Human Services* by the State.

* * * * * * *

DISABILITY DETERMINATIONS

SEC. 221. (a)(1) * * *

* * * * * * *

(d) [Any] *(1) Except in cases to which paragraph (2) applies, any* individual dissatisfied with any determination under subsection (a), (b), (c), or (g) shall be entitled to a hearing thereon by the Secretary to the same extent as is provided in section 205(b) with respect to decisions of the Secretary, and to judicial review of the Secretary's final decision after such hearing as is provided in section 205(g).

(2)(A) In any case where—

(i) an individual is a recipient of disability insurance benefits, child's, widow's, or widower's insurance benefits based on

disability, mother's or father's insurance benefits based on the disability of the mother's or father's child who has attained age 16, or benefits under title XVIII based on disability, and

(ii) the physical or mental impairment on the basis of which such benefits are payable is determined by a State agency (or the Secretary in a case to which subsection (g) applies) to have ceased, not to have existed, or to no longer be disabling,

such individual shall be entitled to notice and opportunity for review as provided in this paragraph.

(B)(i) Any determination referred to in subparagraph (A)(ii)—

(I) which has been prepared for issuance under this section by a State agency (or the Secretary) for the purpose of providing a basis for a decision of the Secretary with regard to the individual's continued rights to benefits under this title (including any decision as to whether an individual's rights to benefits are terminated or otherwise changed), and

(II) which is in whole or in part unfavorable to such individual,

shall remain pending until after the notice and opportunity for review provided in this subparagraph.

(ii) Any such pending determination shall contain a statement of the case, in understandable language, setting forth a discussion of the evidence and stating such determination, the reason or reasons upon which such determination is based, the right to a review of such determination (including the right to make a personal appearance as provided in this subparagraph), the right to submit additional evidence prior to or during such review as provided in this clause, and that, if such review is not requested, the individual will not be entitled to a hearing on such determination and such determination will be the disability determination upon which the final decision of the Secretary on entitlement will be based. Such statement of the case shall be transmitted in writing to such individual. Upon request by any such individual, or by a wife, divorced wife, widow, surviving divorced wife, surviving divorced mother, husband, divorced husband, widower, surviving divorced husband, surviving divorced father, child, or parent, who makes a showing in writing that his or her rights may be prejudiced by such determination, he or she shall be entitled to a review by the State agency (or the Secretary in a case to which subsection (g) applies) of such determination, including the right of such individual to make a personal appearance, and may submit additional evidence for purposes of such review prior to or during such review. Any such request must be filed within 30 days after notice of the pending determination is received by the individual making such request. Any review carried out by a State agency under this subpargraph shall be made in accordance with the pertinent provisions of this title and regulations thereunder.

(iii) A review under this subparagraph shall include a review of evidence and medical history in the record at the time such disability determination is pending, shall examine any new medical evidence submitted or obtained for purposes of the review, and shall afford the individual requesting the review the opportunity to make a personal appearance with respect to the case at a place which is reasonably accessible to such individual.

(iv) On the basis of the review carried out under this subparagraph, the State agency (or the Secretary in a case to which subsection (g) applies) shall affirm or modify the pending determination and issue the pending determination, as so affirmed or modified, as the disability determination under subsection (a), (c), (g), or (h) (as applicable).

(C) Any disability determination described in subparagraph (A)(ii) which is issued by the State agency (or the Secretary) and which is in whole or in part unfavorable to the individual requesting the review shall contain a statement of the case, in understandable language, setting forth a discussion of the evidence, and stating the determination, the reason or reasons upon which the determination is based, the right (in the case of an individual who has exercised the right to review under subparagraph (B)) of such individual to a hearing under subparagraph (D), and the right to submit additional evidence prior to or at such a hearing. Such statement of the case shall be transmitted in writing to such individual and his or her representative (if any).

(D)(i) An individual who has exercised the right to review under subparagraph (B) and who is dissatisfied with the disability determination referred to in subparagraph (C) shall be entitled to a hearing thereon to the same extent as is provided in section 205(b) with respect to decisions of the Secretary on which hearings are required under such section, and to judicial review of the Secretary's final decision after such hearing as is provided in section 205(g). Nothing in this section shall be construed to deny an individual his or her right to notice and opportunity for hearing under section 205(b) with respect to matters other than the determination referred to in subparagraph (A)(ii).

(ii) Any hearing referred to in clause (i) shall be held before an administrative law judge who has been duly appointed in accordance with section 3105 of title 5, United States Code.

(e) Each State which is making disability determinations under subsection (a)(1) under this section shall be entitled to receive from the Trust Funds, in advance or by way of reimbursement, as determined by the Secretary, the cost to the State of making disability determinations under subsection (a)(1). The Secretary shall from time to time certify such amount as is necessary for this purpose to the Managing Trustee, reduced or increased, as the case may be, by any sum (for which adjustment hereunder has not previously been made) by which the amount certified for any prior period was greater or less than the amount which should have been paid to the State under this subsection for such period; and the Managing Trustee, prior to audit or settlement by the General Accounting Office, shall make payment from the Trust Funds at the time or times fixed by the Secretary, in accordance with such certification. Appropriate adjustments between the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund with respect to the payments made under this subsection shall be made in accordance with paragraph (1) of subsection (g) of section 201 (but taking into account any refunds under subsection (f) of this section) to insure that the [Federal Disability Trust Fund is charged] *Federal Disability Insurance Trust Fund is charged* with all expenses incurred which are attributable to the

administration of section 223 and the Federal Old-Age and Survivors Insurance Trust Fund is charged with all other expenses.

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[(i)] *(h)*(1) In any case where an individual is or has been determined to be under a disability, the case shall be reviewed by the applicable State agency or the Secretary (as may be appropriate), for purposes of continuing eligibility, at least once every 3 years, subject to paragraph (2); except that where a finding has been made that such disability is permanent, such reviews shall be made at such times as the Secretary determines to be appropriate. Reviews of cases under the preceding sentence shall be in addition to, and shall not be considered as a substitute for, any other reviews which are required or provided for under or in the administration of this title.

(2) The requirement of paragraph (1) that cases be reviewed at least every 3 years shall not apply to the extent that the Secretary determines, on a State-by-State basis, that such requirement should be waived to insure that only the appropriate number of such cases are reviewed. The Secretary shall determine the appropriate number of cases to be reviewed in each State after consultation with the State agency performing such reviews, based upon the backlog of pending reviews, the projected number of new applications for disability insurance benefits, and the current and projected staffing levels of the State agency, but the Secretary shall provide for a waiver of such requirement only in the case of a State which makes a good faith effort to meet proper staffing requirements for the State agency and to process case reviews in a timely fashion. The Secretary shall report annually to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives with respect to the determinations made by the Secretary under the preceding sentence.

(3) The Secretary shall report semiannually to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives with respect to the number of reviews of continuing disability carried out under paragraph (1), the number of such reviews which result in an initial termination of benefits, the number of requests for reconsideration of such initial termination or for a hearing with respect to such termination under subsection (d), or both, and the number of such initial terminations which are overturned as the result of a reconsideration or hearing.

(i) A determination under subsection (a), (c), (g), or (h) that an individual is not under a disability by reason of a mental impairment shall be made only if, before its issuance by the State (or the Secretary), a qualified psychiatrist or psychologist who is employed by the State agency or the Secretary (or whose services are contracted for by the state agency or the Secretary) has completed the medical portion of the case review, including any applicable residual functional capacity assessment.

(j) The Secretary shall prescribe regulations which set forth, in detail—

(1) the standards to be utilized by State disability determination services and Federal personnel in determining when a con-

sultative examination should be obtained in connection with disability determinations;

(2) standards for the type of referral to be made; and

(3) procedures by which the Secretary will monitor both the referral processes used and the product of professionals to whom cases are referred.

Nothing in this subsection shall be construed to preclude the issuance, in accordance with section 533(b)(A) of title 5, United States Code, of interpretive rules, general statements of policy, and rules of agency organization relating to consultative examinations if such rules and statements are consistent with such regulations.

REHABILITATION SERVICES

Referral for Rehabilitation Services

SEC. 222. (a) It is hereby declared to be the policy of the Congress that disabled individuals applying for a determination of disability, and disabled individuals who are entitled to child's insurance benefits, widow's insurance benefits, or widower's insurance benefits, shall be promptly referred to the State agency or agencies administering of supervising the administration of the State plan approved under [the Vocational Rehabilitation Act] *title I of the Rehabilitation Act of 1973* for necessary vocational rehabilitation services, to the end that the maximum number of such individuals may be rehabilitated into productive activity.

Deductions on Account of Refusal To Accept Rehabilitation Services

(b)(1) Deductions, in such amounts and at such time or times as the Secretary shall determine, shall be made from any payment or payments under this title to which an individual is entitled, until the total of such deductions equals such individual's benefit or benefits under sections 202 and 223 for any month in which such individual, if a child who has attained the age of eighteen and is entitled to child's insurance benefits, a widow, widower, surviving divorced wife, or surviving divorced husband who has not attained age 60, or an individual entitled to disability insurance benefits, refuses without good cause to accept rehabilitation services available to him under a State plan approved under [the Vocational Rehabilitation Act] *title I of the Rehabilitation Act of 1973*. Any individual who is a member or adherent of any recognized church or religious sect which teaches its members or adherents to rely solely, in the treatment and cure of any physical or mental impairment, upon prayer or spiritual means through the application and use of the tenets or teachings of such church or sect, and who, solely because of his adherence to the teachings or tenets of such church, or sect, refuses to accept rehabilitation services available to him under a State plan approved under [the Vocational Rehabilitation Act] *title I of the Rehabilitation Act of 1973*, shall, for the purposes of the first sentence of this subsection, be deemed to have done so good cause.

* * * * * * *

(3) Deductions shall be made from any wife's, husband's, or child's insurance benefit, based on the wages and self-employment income of an individual entitled to disability insurance benefits, to which a wife, divorced wife, husband, divorced husband, or child is entitled, until the total of such deductions [equal] *equals* such wife's, husband's, or child's insurance benefit or benefits under section 202 for any month in which the individual, on the basis of whose wages and self-employment income such benefit was payable, refuses to accept rehabilitation services and deductions, on account of such refusal, are imposed under paragraph (1).

(4) The provisions of paragraph (1) shall not apply to any child entitled to benefits under section 202(d), if he has attained the age of 18 but has not attained the age of 22, for any month during which he is a full-time *elementary or secondary school* student (as defined and determined under section 202(d)).

Costs of Rehabilitation Services from Trust Funds

(d)(1) For purposes of making vocational rehabilitation services more readily available to disabled individuals who are—

(A) entitled to disability insurance benefits under section 223,

(B) entitled to child's insurance benefits under section 202(d) after having attained age 18 (and are under a disability),

(C) entitled to widow's insurance benefits under section 202(e) prior to attaining age 60, or

(D) entitled to widower's insurance benefits under section 202(f) prior to attaining 60,

to the end that savings will accrue to the Trust Funds as a result of rehabilitating such individuals [into substantial gainful activity], there are authorized to be transferred from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund each fiscal such sums as may be necessary to enable the Secretary to reimburse the State for the reasonable and necessary costs of vocational rehabilitation services furnished such individual (including services during their waiting periods), under a State plan for vocational rehabilitation services approved under title I of the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.), [which results in their performance of substantial gainful activity which lasts for a continuous period of nine months] *(i) in cases where the furnishing of such services results in the performance by such individuals of substantial gainful activity for a continous period of nine months, (ii) in cases where such individuals received benefits as a result of section 225(b) (except that no reimbursement under this paragraph shall be made for services furnished to any individual receiving such benefits for any period after the close of such individual's ninth consecutive month of substantial gainful activity or the close of the month in which his or her entitlement to such benefits ceases, whichever first occurs), and (iii) in cases where such individuals, without good cause, refuse to accept vocational rehabilitation services or fail to cooperate in such a manner as to preclude their successful rehabilitation* The determination that the vocational rehabilitation services contributed to the successful return of such individuals to substantial gainful activity, *the determination that an individual, without good cause, refused to accept vocational rehabilitation services or failed to cooperate in such a manner as to preclude successful rehabilitation,* and the determination of the amount of costs to be reimbursed under this subsection shall be made by the Commissioner of Social Security in accordance with criteria formulate by him.

DISABILITY INSURANCE BENEFIT PAYMENTS

Disability Insurance Benefits

SEC. 223. (a)(1) Every individual who—

(A) is insured for disability insurance benefits (as determined under subsection (c)(1)),

(B) has not attained the retirement age (as defined in section 216(l)),

(C) has filed application for disability insurance benefits, and

(D) is under a disability (as defined in subsection (d))

shall be entitled to a disability insurance benefit (i) for each month beginning with the first month after [his] *his or her* waiting period (as defined in subsection (c)(2)) in which [he] *such individual* becomes so entitled to such insurance benefits, or (ii) for each month beginning with the first month during all of which [he] *such individual* is under a disability and in which [he] *he or she* becomes so entitled to such insurance benefits, but only if [he] *such individual* was entitled to disability insurance benefits which terminated, or had a period of disability (as defined in section 216(i)) which ceased, within the 60-month period preceding the first month in which [he] *he or she* is under such disability, and ending with the month preceding whichever of the following months is the earliest: the month in which [he] *such individual* dies, the month in which [he] *such individual* attains retirement age (as defined in section 216(l)), or, subject to subsection (e), the termination month. For purposes of the preceding sentence, the termination month for any individual shall be the third month following the month in which [his] disability ceases; except that, in the case of an individual who has a period of trial work which ends as determined by application of section 222(c)(4)(A), the termination month shall be the earlier of (I) the third month following the earliest month after the end of such period of trial work with respect to which such individual is determined to no longer be suffering from a disabling physical or mental impairment, or (II) the third month following the earliest month in which such individual engages or is determined able to engage in substantial gainful activity, but in no event earlier than the first month occurring after the 15 months following such period of trial work in which [he] *such individual* engages or is determined able to engage in substantial gainful activity. No payment under this paragraph may be made to an individual who would not meet the definition of disability in subsection (d) except for paragraph (1)(B) thereof for any month in which [he] *such individual* engages in substantial gainful activity, and no payment may be made for such month under subsection (b), (c), or (d) of section 202 to any person on the basis of the wages and self-employment income of such individual. In the case of a deceased individual, the requirement of subparagraph (C) may be satisfied by an application for benefits filed with respect to such individual within 3 months after the month in which [he] *such individual* died.

(2) Except as provided in section 202(q) and section 215(b)(2)(A)(ii), such individual's disability insurance benefit for any month shall be equal to [his] *his or her* primary insurance amount for such month determined under section 215 as though [he] *such individual* had attained age 62 in—

(A) the first month of [his] *his or her* waiting period, or

(B) in any case in which clause (ii) of paragraph (1) of this subsection is applicable, the first month for which [he] *he or she* becomes entitled to such disability insurance benefits,

and as though [he] *such individual* had become entitled to old-age insurance benefits in the month in which the application for disability insurance benefits was filed and [he] *he or she* was entitled to an old-age insurance benefit for each month for which (pursuant to subsection (b)) [he] *he or she* was entitled to a disability insurance benefit. For the purposes of the preceding sentence, in the case of an individual who attained age 62 in or before the first month referred to in subparagraph (A) of (B) of such sentence, as the case may be, the elapsed years referred to in section 215(b)(3) shal not include the year in which [he] *such individual* attained age 62, or any year thereafter.

Filing of Application

(b) An application for disability insurance benefits filed before the first month in which the applicant satisfies the requirements for such benefits (as prescribed in subsection (a)(1)) shall be deemed a valid application (and shall be deemed to have been filed in such first month) only if the applicant satisfies the requirements for such benefits before the Secretary makes a final decision on the application and no request under section 205(b) for notice and opportunity for a hearing thereon is made, or if such a request is made, before a decision based upon the evidence adduced at the hearing is made (regardless of whether such decision becomes the final decision of the Secretary). An individual who would have been entitled to a disability insurance benefit for any month had [he] *he or she* filed application therefor before the end of such month shall be entitled to such benefit for such month if such application is filed before the end of the 12th month immediately succeeding such month.

Definitions of Insured Status and Waiting Period

(c) For purposes of this section—

(1) An individual shall be insured for disability insurance benefits in any month if—

(A) [he] *such individual* would have been a fully insured individual (as defined in section 214) had [he] *he or she* attained age 62 and filed application for benefits under section 202(a) on the first day of such month, and

[THE INDENTATIONS OF THE FOLLOWING SUBPARAGRAPH (B) ARE REALIGNED BY THE BILL TO CONFORM TO THE PRECEDING SUBPARAGRAPH.]

(B)(i)**[he]** *such individual* had not less than 20 quarters of coverage during the 40-quarter period which ends with the quarter in which such month occurred, or

(ii) if such month ends before the quarter in which **[he]** *such individual* attains (or would attain) age 31, not less than one-half (and not less than 6) of the quarters during the period ending with the quarter in which such month occurred and beginning after **[he]** *he or she* attained the age of 21 were quarters of coverage, or (if the number of quarters in such period is less than 12) not less than 6 of the quarters in the 12-quarter period ending with such quarter were quarters of coverage, or

(iii) in the case of an individual (not otherwise insured under clause (i)) who, by reason of section 216(i)(3)(B)(ii), had a prior period of disability that began during a period before the quarter in which he or she attained age 31, not less than one-half of the quarters beginning after such individual attained age 21 and ending with the quarter in which such month occurs are quarters of coverage, or (if the number of quarters in such period is less than 12) not less than 6 of the quarters in the 12-quarter period ending with such quarter are quarters of coverage;

except that the provisions of subparagraph (B) of this paragraph shall not apply in the case of an individual who is blind (within the meaning of "blindness" as defined in section 216(i)(1)). For purposes of subparagraph (B) of this paragraph, when the number of quarters in any period is an odd number, such number shall be reduced by one, and a quarter shall not be counted as part of any period if any part of such quarter was included in a period of disability unless such quarter was a quarter of coverage.

(2) The term "waiting period" means, in the case of any application for disability insurance benefits, the earliest period of five consecutive calendar months—

(A) throughout which the individual with respect to whom such application is filed has been under a disability, and

(B) which begins not earlier than with the first day of the seventeenth month before the month in which such application is filed if such individual is insured for disability insurance benefits in such seventeenth month, or (ii) if **[he]** *such individual* is not so insured in such month, which begins not earlier than with the first day of the first month after such seventeenth month in which **[he]** *he or she* is so insured.

Notwithstanding, the preceding provisions of this paragraph, no waiting period may begin for any individual before January 1, 1957.

Definition of Disability

(d)(1) The term "disability" means—

(A) inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months; or

(B) in the case of an individual who has attained the age of 55 and is blind (within the meaning of "blindness" as defined in section 216(i)(1)), inability by reason of such blindness to engage in substantial gainful activity requiring skills or abilities comparable to those of any gainful activity in which [he] *such individual* has previously engaged with some regularity and over a substantial period of time.

(2) For purposes of paragraph (1)(A)

(A) [an] *An* individual (except a widow, surviving divorced wife, widower, or surviving divorced husband for purposes of section 202(e) or (f)) shall be determined to be under a disability only if [his] *such individual's* physical or mental impairment or impairments are of such severity that [he] *he or she* is not only unable to do his previous work but cannot, considering [his] *his or her* age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which [he] *such individual* lives, or whether a specific job vacancy exists for [him,] *such individual,* or whether [he] *such individual* would be hired if [he] *he or she* applied for work. For purposes of the precedin sentence (with respect to any individual), "work which exists in the national economy" means work which exists in significant numbers either in the region where such individual lives or in several regions of the country.

(B) A widow, surviving divorced wife, widower, or surviving divorced husband shall not be determined to be under a disability (for purposes of section 202 (e) or (f)) unless his or her physical or mental impairment or impairments are of a level of severity which under regulations prescribed by the Secretary is deemed to be sufficient to preclude an individual from engaging in any gainful activity.

(C) In determining whether an individual's physical or mental impairment or impairments are of such severity that he or she is unable to engage in substantial gainful activity, the Secretary shall consider the combined effect of all of the individual's impairments without regard to whether any such impairment, if considered separately, would be of such severity.

(3) For purposes of this subsection, a "physical or mental impairment" is an impairment that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.

(4) The Secretary shall by regulations prescribe the criteria for determining when services performed or earnings derived from services demonstrate an individual's ability to engage in substantial gainful activity. No individual who is blind shall be regarded

as having demonstrated an ability to engage in substantial gainful activity on the basis of earnings that do not exceed the exempt amount under section 203(f)(8) which is applicable to individuals described in subparagraph (D) thereof. Notwithstanding the provisions of paragraph (2), an individual whose services or earnings meet such criteria shall, except for purposes of section 222(c), be found not to be disabled. In determining whether an individual is able to engage in substantial gainful activity by reason of [his] *his or her* earnings, where [his] *such individual's* disability is sufficiently severe to result in a functional limitation requiring assistance in order for [him] *him or her* to work, there shall be excluded from such earnings an amount equal to the cost (to such individual) of any attendant care services, medical devices, equipment, prostheses, and similar items and services (not including routine drugs or routine medical services unless such drugs or services are necessary for the control of the disabling condition) which are necessary (as determined by the Secretary in regulations) for that purpose, whether or not such assistance is also needed to enable [him] *such individual* to carry out [his] *his or her* normal daily functions; except that the amounts to be excluded shall be subject to such reasonable limits as the Secretary may prescribe.

(5) An individual shall not be considered to be under a disability unless [he] *he or she* furnishes such medical and other evidence of the existence thereof as the Secretary may require. Any non-Federal hospital, clinic, laboratory, or other provider of medical services, or physician not in the employ of the Federal Government, which supplies medical evidence required and requested by the Secretary under this paragraph shall be entitled to payment from the Secretary for the reasonable cost of providing such evidence.

(6)(A) Notwithstanding any other provision of this title, any physical or mental impairment which arises in connection with the commission by an individual (after the date of the enactment of this paragraph) of an offense which constitutes a felony under applicable law and for which such individual is subsequently convicted, or which is aggravated in connection with such an offense (but only to the extent so aggravated), shall not be considered in determining whether an individual is under a disability.

(B) Notwithstanding any other provision of this title, any physical or mental impairment which arises in connection with an individual's confinement in a jail, prison, or other penal institution or correctional facility pursuant to such individual's conviction of an offense (committed after the date of the enactment of this paragraph) constituting a felony under applicable law, or which is aggravated in connection with such a confinement (but only to the extent so aggravated), shall not be considered in determining whether such individual is under a disability for purposes of benefits payable for any month during which such individual is so confined.

(e) No benefit shall be payable under subsection (d)(1)(B)(ii), (e)(1)(B)(ii), or (f)(1)(B)(ii) of section 202 or under subsection (a)(1) of this section to an individual for any month, after the third month, in which [he] *such individual* engages in substantial gainful activity during the 15-month period following the end of [his] *his or* *her* trial work period determined by application of section 222(c)(4)(A).

Standard of Review for Termination of Disability Benefits

(f) A recipient of benefits under this title or title XVIII based on the disability of any individual may be determined not to be entitled to such benefits on the basis of a finding that the physcial or mental impairment on the basis of which such benefits are provided has ceased, does not exist, or is not disabling only if such finding is supported by—

(1) substantial evidence which demonstrates that there has been medical improvement in the individual's impairment or combination of impairments so that—

(A) the individual is now able to engage in substantial gainful activity, or

(B) if the individual is a widow or suriving divorced wife under section 202(e) or a widower a suriving divorced husband under section 202(f), the severity of his or her impairment or impairments is no longer deemed under regulations prescribed by the Secretary sufficient to preclude the individual from engaging in gainful activity; or

(2) substantial evidence which—

(A) consists of new medical evidence and (in a case to which clause (ii) does not apply) a new assessment of the individual's residual functional capacity and demonstrates that, although the individual has not improved medically, he or she is nonetheless a beneficiary of advances in medical or vocational therapy or technology so that—

(i) the individual is now able to engage in substantial gainful activity, or

(ii) if the individual is a widow or surviving divorced wife under section 202(e) or a widower or surviving divorced husband under section 202(f), the severity of his or her impairment or impairments is no longer deemed under regulations prescribed by the Secretary sufficient to preclude the individual from engaging in gainful activity; or

(B) demonstrates that, although the individual has not improved medically, he or she has undergone vocational therapy so that the requirements of clause (i) or (ii) of subparagraph (A) are met; or

(3) substantial evidence which demonstrates that, as determined on the basis of new or improved diagnostic techniques or evaluations, the individual's impairment or combination of impairments is not as disabling as it was considered to be at the time of the most recent prior decision that he or she was under a disability or continued to be under a disability, and that therefore—

(A) the individual is able to engage in substantial gainful activity, or

(B) if the invidividual is a widow or surviving divorced wife under section 202(e) or a widower or surviving divorced husband under section 202(f), the severity of his or

her impairment or impairments is not deemed under regulations prescribed by the Secretary sufficient to preclude the individual from engaging activity.

Nothing in this subsection shall be construed to require a determination that a recipient of benefits under this title or title XVIII based on an individual's disability is entitled to such benefits if evidenced on the record at the time any prior determination of such entitlement to disability was made, or new evidence which relates to that determination, shows that the prior determination was either clearly erroneous at the time it was made or was fraudulently obtained, or if the individual is engaged in substantial gainful activity. In any case in which there is no available medical evidence supporting a prior disability determination, nothing in this subsection shall preclude the Secretary, in attempting to meet the requirements of the preceding provisions of this subsection, from securing additional medical reports necessary to reconstruct the evidence which supported such prior disability determination. For purposes of this subsection, a benefit under this title is based on an individual's disability if it is a disability insurance benefit, a child's widow's or widower's insurance benefit based on disability, or a mother's or father's insurance benefit based on the disability of the mother's or father's child who has attained age 16.

Continued Payment of Disability Benefits During Appeal

(g) (1) In any case where—

(A) an individual is a recipient of disability insurance benefits, or of child's, widow's, or widower's insurance benefits based on disability,

(B) the physical or mental impairment on the basis of which such benefits are payable is found to have ceased, not to have existed, or to no longer be disabling, and as a consequence such individual is determined not to be entitled to such benefits, and

(C) as timely request [for a hearing under section 221(d), or for an administrative review prior to such hearing] *for review under section 221(d)(2)(B) or for a hearing under section 221(d)(2)(D)* is pending with respect to the determination that he is not so entitled,

such individual may elect (in such manner and form and within such time as the Secretary shall by regulations prescribe) to have the payment of such benefits, [and the payment of any other benefits under this Act based on such individual's wages and self-employment income (including benefits under title XVIII),] *the payment of any other benefits under this title based on such individual's wages and self-employment income, the payment of mother's or father's insurance benefits to such individual's mother or father based on the disability of such individual as a child who has attained age 16, and the payment of benefits under title XVIII based on such individual's disability,* continued for an additional period beginning with the first month beginning after the date of the enactment of this subsection for which (under such determination) such benefits are no longer otherwise payable, and ending with the earlier of (i) the month preceding the month in which a decision is made after such a hearing, *or* (ii) the month preceding the month in which no such request for [a hearing or an administrative review] *review or a hearing* is pending[, or (iii) June 1984].

(2)(A) If an individual elects to have the payment of [his] *his or her* benefits continued for an additional period under paragraph (1), and the final decision of the Secretary affirms the determination that [he] *such individual* is not entitled to such benefits, any benefits paid under this title pursuant to such election (for months in such additional period) shall be considered overpayments for all purposes of this title, except as otherwise provided in subparagraph (B).

(B) If the Secretary determines that the individual's appeal of [his] *his or her* termination of benefits was made in good faith, all of the benefits paid pursuant to such individual's election under paragraph (1) shall be subject to waiver consideration under the provisions of section 204.

(3) The provisions of paragraphs (1) and (2) shall apply with respect to determinations (that individuals are not entitled to benefits) which are made—

(A) on or after the date of the enactment of this subsection, or prior to such date but only on the basis of a timely request for [a hearing under section 221(d), or for an administrative review prior to such hearing,] *review under section 221(d)(2)(B) or for a hearing under section 221(d)(2)(D),* and

(B) prior to October 1, 1983.

* * * * * * *

ENTITLEMENT TO HOSPITAL INSURANCE BENEFITS

SEC. 226. (a) * * *

(b) Every individual who—

(1) * * *

(2)(A) * * *

* * * * * * *

(C)(i) * * *

(ii) would meet the requirements of subparagraph (A) (as determined under the disability criteria, including reviews, applied under this title), including the requirement that he has been entitled to the specified benefits for 24 months, if—

(I) medicare qualified Federal employment (as defined in section 210(p)) were treated as employment (as defined in section 210(a)) for purposes of this title, and

(II) the filing of the application under clause (i) of this subparagraph were deemed to be the filing of an application for the disability-related benefits referred to in clause (i), (ii), or (iii) of subparagraph (A),

shall be entitled to hospital insurance benefits under part [(A)] *A* of title XVIII for each month beginning with the later of (I) July 1973 or (II) the twenty-fifth month of his entitlement or status as a qualified railroad retirement beneficiary described in paragraph (2), and ending (subject to the last sentence of this subsection) with the month following the month in which notice of termination of such entitlement to benefits or status as a qualified railroad retirement beneficiary described in paragraph (2) is mailed to him, or if earlier, with the month before the month in which he attains age 65. In applying the previous sentence in the case of an individual described in paragraph (2)(C), the "twenty-fifth month of his entitlement" refers to the first month after the twenty-fourth month of entitlement to specified benefits referred to in paragraph (2)(C) and "notice of termination of such entitlement" refers to a notice that the individual would no longer be determined to be entitled to such specified benefits under the conditions described in that paragraph. For purposes of this subsection, an individual who has had a period of trial work which ended as provided in section 222(c)(4)(A), and whose entitlement to benefits or status as a qualified railroad retirement beneficiary as described in paragraph (2) has subsequently terminated, shall be deemed to be entitled to such benefits or to occupy such status (notwithstanding the termination of such entitlement or status) for the period of consecutive months throughout all of which the physical or mental impairment, on which such entitlement or status was based, continues, and throughout all of which such individual would have been entitled to monthly insurance benefits under title II or as a qualified railroad retirement beneficiary had such individual been unable to engage in substantial gainful activity, but not in excess of 24 such months.

* * * * * * *

BENEFITS AT AGE 72 FOR CERTAIN UNINSURED INDIVIDUALS

Eligibility

SEC. 228.
(a) * * *

* * * * * * *

Annual Reimbursement of Federal Old-Age and Survivors Insurance Trust Fund

(g) There are authorized to be appropriated to the Federal Old-Age and Survivors Insurance Trust Fund for the fiscal year ending June 30, 1969, and for each fiscal year thereafter, such sums as the Secretary [of Health, Education, and Welfare] deems necessary on account of—

(1) payments made under this section during the second preceding fiscal year and all fiscal years prior thereto to individuals who, as of the beginning of the calendar year in which falls the month for which payment was made, had less than 3 quarters of coverage,

(2) the additional administrative expenses resulting from the payments described in paragraph (1), and

(3) any loss in interest to such Trust Fund resulting from such payments and expenses,

in order to place such Trust Fund in the same position at the end of such fiscal year as it would have been in if such payments had not been made.

* * * * * * *

BENEFITS IN CASE OF MEMBERS OF THE UNIFORMED SERVICES

SEC. 229.

(a) * * *

(b) There are authorized to be appropriated to each of the Trust Funds, consisting of the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, and the Federal Hospital Insurance Trust Fund, for transfer on July 1 of each calendar year to such Trust Fund from amounts in the general fund in the Treasury not otherwise appropriated, an amount equal to the total of the additional amounts which would be appropraited to such Trust Frund for the fiscal year ending September 30 of such calendar year under section 201 or 1817 of this Act if the amounts of the additional wages deemed to have been paid for such calendar year by reason of subsection (a) constituted remuneration for employment (as defined in section 3121(b) of the Internal Revenue Code of 1954) for purposes of the taxes imposed by section 3101 and 3111 of the Internal Revenue Code of 1954. Amounts authorized to be appropriated under this subsection for transfer on July 1 of each calendar year shall be determined on the basis of estimates of the Secretary of the wages deemed to be paid for such calendar year under subsection (a); and proper adjustments shall be made in amounts authorized to be appropriated for subsequent transfer to the extent prior estimates were in excess of or were less than such wages so deemed to be paid. *Additional adjustments may be made in the amounts so authorized to be appropriated to the extent that the amounts transferred in accordance with clauses (i) and (ii) of section 151(b)(3)(B) of the Social Security Amendments of 1983 with respect to wages deemed to have been paid in 1983 were in excess of or were less than the amount which the Secretary, on the basis of appropriate data, determines should have been so transferred.*

ADJUSTMENT OF THE CONTRIBUTION AND BENEFIT BASE

SEC. 230. (a) * * *

* * * * * * *

(c) For purposes of this section, and for purposes of determining wages and self-employment income under sections 209, 211, 213, and 215 of this Act and sections 1402, 3121, 3122, 3125, 6413, and 6654 of the Internal Revenue Code of 1954, (1) the "contribution and benefit base" with respect to remuneration paid in (and taxable years beginning in) any calendar year after 1973 and prior to the calendar year with the June of which the first increase in benefits pursuant to section 215(i) of this Act becomes effective shall be $13,200 or (if applicable) such other amount as may be specified in a law enacted subsequent to the law which added this section, and (2) the "contribution and benefit base" with respect to remuneration paid (and taxable years beginning)—

(A) in 1978 shall be $17,700,
(B) in 1979 shall be $22,900,
(C) in 1980 shall be $25,900, and
(D) in 1981 shall be $29,700.

For purposes of determining under subsection (b) the "contribution and benefit base" with respect to remuneration paid (and taxable years beginning) in 1982 and subsequent years, the dollar amounts specified in clause (2) of the preceding sentence shall be considered to have resulted from the application of such subsection (b) and to be the amount determined (with respect to the years involved) under that subsection. For purposes of determining employee and employer tax liability under sections 3201(a) and 3221(a) of the Internal Code of 1954, for purposes of determining the portion of the employee representative tax liability under section 3211(a) of such Code which results from the application of the 11.75 percent rate specified therein, and for purposes of computing average monthly compensation under section 3(j) of the Railroad Retirement Act of 1974, except with respect to annuity amounts determined under section 3(a) or [(3)(f)(3)] *3(f)(3)* of such act, clause (2) and the preceding sentence of this subsection shall be disregarded.

* * * * * * *

BENEFITS IN CASE OF CERTAIN INDIVIDUALS INTERNED DURING WORLD WAR II

SEC. 231. (a) * * *

(b)(1) * * *

* * * * * * *

(3) Upon application for benefits, a recalculation of benefits (by reason of this section), or a lump-sum death payment on the basis of the wages and self-employment income of any individual who was an internee, the Secretary of [Health, Education, and Welfare] *Health and Human Services* shall accept the certification of the Secretary of Defense or his designee concerning any period of time for which an internee is to receive credit under paragraph (1) and shall make a decision without regard to clause (B) of paragraph (2) of this subsection unless he has been notified by some other agency or instrumentality of the United States that, on the basis of the period for which such individual was an internee, a benefit described in clause (B) of paragraph (2) has been determined by such agency or instrumentality to be payable by it. If the Secretary of [Health, Education, and Welfare] *Health and Human Services* has not been so notified, he shall then ascertain whether some other agency or wholly owned instrumentality of the United States has decided that a benefit described in clause (B) of paragraph (2) is payable by it. If any such agency or instrumentality has decided, or thereafter decides, that such a benefit is payable by it, it shall so notify the Secretary of [Health, Education, and Welfare] *Health and Human Services* and the Secretary shall certify no further benefits for payment or shall recompute the amount of any further benefits payable, as may be required by this section.

(4) Any agency or wholly owned instrumentality of the United States which is authorized by any law of the United States to pay benefits, or has a system of benefits which are based, in whole or in part, on any period for which any individual was an internee shall, at the request of the Secretary of [Health, Education, and Welfare] *Health and Human Services,* certify to him, with respect to any individaul who was an internee, such information as the Secre-

tary deems necessary to carry out his functions under paragraph (3) of this subsection.

* * * * * * *

COMPLIANCE WITH COURT OF APPEALS DECISIONS

Sec. 234. (a) Except as provided in subsection (b), if, in any decision in a case to which the Department of Health and Human Services or an officer or employee thereof is a party, a United States court of appeals—

(1) interprets a provision of this title or of any regulation prescribed under this title, and

(2) requires such Department or such officer or employee to apply or carry out the provision in a manner which varies from the manner in which the provision is generally applied or carried out in the circuit involved,

the Secretary shall acquiesce in the decision and apply the interpretation with respect to all individuals and circumstances covered by the provision in the circuit until a different result is reached by a ruling by the Supreme Court of the United States on the issue involved or by a subsequently enacted provision of Federal law.

(b) Acquiescence shall not be required under subsection (a) during the pendency of any direct appeal of the case by the Secretary under section 1252 of title 28, United States Code, or any request for review of the case by the Secretary under section 1254 of such title if such direct appeal or request for review is filed during the period of time allowed for such filing. If the Supreme Court finds that the requirements for the direct appeal under such section 1252 have not been met or denies a request for review under such section 1254, the Secretary shall resume acquiescence in the decision of the court of appeals in accordance with subsection (a) from the date of such finding or denial.

* * * * * * *

TITLE III—GRANTS TO STATES FOR UNEMPLOYMENT COMPENSATION ADMINISTRATION

* * * * * * *

PAYMENTS TO STATES

SEC. 302. (a) * * *

(b) Out of the sums appropriated therefor, the Secretary of the Treasury shall, upon receiving a certification under subsection (a), pay, through [the Fiscal Service of the Treasury Department] *the Fiscal Service of the Department of the Treasury* and prior to audit or settlement by the General Accounting Office, to the State agency charged with the administration of such law the amount so certified.

PROVISIONS OF STATE LAWS

SEC. 303. (a) The Secretary of Labor shall make no certification for payment to any State unless he finds that the law of such

State, approved by the Secretary of Labor under the Federal Unemployment Tax Act, includes provision for—

(1) * * *

* * * * * * *

(4) The payment of all money received in the unemployment fund of such State (except for refunds of sums erroneously paid into such fund and except for refunds paid in accordance with the provisions of section [1606(b)] *3305(b)* of the Federal Unemployment Tax Act, immediately upon such receipt, to the Secretary of the Treasury to the credit of the unemployment trust fund established by section 904; and

Expenditure of all money withdrawn from an unemployment fund of such State, in the payment of unemplopyment compensation, exclusive of expenses of administration, and for refunds of sums erroneously paid into such fund and refunds paid in accordance with the provisions of section [1606(b)] *3305(b)* of the Federal Unemployment Tax Act: *Provided,* That an amount equal to the amount of employee payments into the unemployment fund of a State may be used in the payment of cash benefits to individuals with respect to their disability, exclusive of expenses of administration: *Provided further,* That the amounts specified by section 903(c)(2) may, subject to the conditions prescribed in such section, be used for expenses incurred by the State for administration of its unemployment compensation law and public employment offices [.] *: Provided further, That nothing in this paragraph shall be construed to prohibit, deducting an amount from unemployment compensation otherwise payable to an individual and using the amount so deducted to pay for health insurance if the individual elected to have such deduction made an such deduction was made under a program approved by the Secretary of Labor;* and

* * * * * * *

(c) The Secretary of Labor shall make no certification for payment to any State if he finds, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law—

(1) [That] *that* such State does not make its records available to the Railroad Retirement Board, and furnish to the Railroad Retirement Board at the expense of the Railroad Retirement Board such copies thereof as the Railroad Retirement Board deems necessary for its purposes;

(2) [That] *that* such State is failing to afford reasonable cooperation with every agency of the United States charged with the administration of any unemployment insurance law; or

* * * * * * *

(e)(1) * * *

(2)(A) The State agency charged with the administration of the State law—

(i) shall require each new applicant for unemployment compensation to disclose whether or not such applicant owes child support [obligatons] *obligations* (as defined in the last sentence of paragraph (1)),

* * * * * * *

TITLE IV—GRANTS TO STATES FOR AID AND SERVICES TO NEEDY FAMILIES WITH CHILDREN AND FOR CHILD-WELFARE SERVICES

* * * * * * *

PART A—AID TO FAMILIES WITH DEPENDENT CHILDREN

[THE INDENTATIONS OF THE FOLLOWING NUMBERED SUBDIVISIONS OF SECTION 402(a) ARE REALIGNED BY THE BILL TO FORM PARAGRAPHS EACH INDENTED 2 EMS.]

STATE PLANS FOR AID AND SERVICES TO NEEDY FAMILIES WITH CHILDREN

SEC. 402. (a) A State plan for aid and services to needy families with children [must] *must*—

(1) provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them;

(2) provide for financial paticipation by the State;

(3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan;

(4) provide for granting an opportunity for a fair hearing before the State agency to any individual whose claim for aid to families with dependent children is denied or is not acted upon with reasonable promptness;

(5) provide such methods of administration (including after January 1, 1940, methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Administrator shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Administrator to be necessary for the proper and efficient operation of the plan; [and]

(6) provide that the State agency will make such reports, in such form and containing such information, as the Administrator may from time to time require, and comply with such provisions as the Administrator may from time to time find necessary to assure the correctness and verification of such reports;

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(9) provide safeguards which restrict the [use of disclosure] *use or disclosure* of information concerning applicants or recipients to purposes directly connected with (A) the administration

of the plan of the State approved under this part, the plan or program of the State under part B, C, or D of this title or under title I, X, XIV, XVI, XIX, or XX, or the supplemental security income program established by title XVI, (B) any investigation, prosecution, or criminal or civil proceeding, conducted in connection with the administration of any such plan or program, (C) the administration of any other Federal or federally assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need, and (D) any audit or similar activity conducted in connection with the administration of any such plan or program by any governmental entity which is authorized by law to conduct such audit or activity; and the safeguards so provided shall prohibit disclosure, to any committee or legislative body (other than an entity referred to in clause (D) with respect to an activity referred to in such clause), of any information which identifies by name or address any such applicant or recipient;

(10) (A) provide that all individuals wishing to make application for aid to families with dependent children shall have opportunity to do so, and that aid to families with dependent children shall, subject to paragraphs (25) and (26), be furnished with reasonable promptness to all eligible individuals; and

(B) provide that an application for aid under the plan will be effective no earlier than the date such application is filed with the State agency or local agency responsible for the administration of the State plan, and the amount payable for the month in which the application becomes effective, if such application becomes effective after the first day of such month, shall bear the same ratio to the amount which would be payable if the application had been effective on the first day of such month as the number of days in the month including and following the effective date of the application bears to the total number of days in such month;

(11) provide for prompt notice (including the transmittal of all relevant information) to the State child support collection agency (established pursuant to part D of this title) of the furnishing of aid to families with dependent children with respect to a child who has been deserted or abandoned by a parent (including a child born out of wedlock without regard to whether the paternity of such child has been established);

(12) provide, effective October 1, 1950, that no aid will be furnished any individual under the plan with respect to any period with respect to which he is receiving old-age assistance under the State plan approved under section 2 of this Act;

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(14)[(A) provide that] *the State agency will require each family to which it furnishes aid to families with dependent children (or to which it would provide such aid but for paragraph (22) or (32)) to report, as a condition to the continued receipt of such aid (or to continuing to be deemed to be a recipient of such aid), each month to the State agency on—*

(i) the income received, family composition, and other relevant circumstances during the prior month; and

(ii) the income and resources it expects to receive, or any changes in circumstances affecting continued eligibility or benefit amount, that it expects to occur, in that month (or in future months);

except that with the prior approval of the Secretary the State may select categories of recipients who may report at specified less frequent intervals upon the State's showing to the satisfaction of the Secretary that to require individuals in such categories to report monthly would result in unwarranted expenditures for administration of this paragraph; and

(B) that, in addition to whatever action may be appropriate based on other reports or information received by the State agency, the State agency will take prompt action to adjust the amount of assistance payable, as may be appropriate, on the basis of the information contained in the report (or upon the failure of the family to furnish a timely report), and will give an appropriate explanatory notice, concurrent with its action, to the family;

(15) provide (A) for the development of a program, for each appropriate relative and dependent child receiving aid under the plan and for each appropriate individual (living in the same home as a relative and child receiving such aid) whose needs are taken into accounts in making the determination under [clause] *paragraph* (7), for preventing or reducing the incidence of births out of wedlock and otherwise strengthening family life, and for implementing such program by assuring that in all appropriate cases (including minors who can be considered to be sexually active) family planning services are offered to them and are provided promptly (directly or under arrangements with others) to all individuals voluntarily requesting such services, but acceptance of family planning services provided under the plan shall be voluntary on the part of such members and individuals and shall not be a prerequisite to eligibility for or the receipt of any other service under the plan; and

(B) to the extent that services provided under this [clause] *paragraph* are furnished by the staff of the State agency or the local agency administering the State plan in each of the political subdivisions of the State, for the establishment of a single organizational unit in such State or local agency, as the case may be, responsible for the furnishing of such services;

(16) provide that where the State agency has reason to believe that the home in which a relative and child receiving aid reside is unsuitable for the child because of the neglect, abuse, or exploitation of such child it shall bring such condition to the attention of the appropriate court or law enforcement agencies in the State, providing such data with rspect to the situation it may have;[15]

(17) provide that if a person specified in paragraph (8)(A)(i) or (ii) receives in any month an amount of income which, together with all other income for that month not excluded under para-

graph (8), exceeds the State's standard of need applicable to the family of which he is a member—

(A) such amount of income shall be considered income to such individual in the month received, and the family of which such person is a member shall be ineligible for aid under the plan for the whole number of months that equals (i) the sum of such amount and all othr income received in such month, not excluded under paragraph (8), divided by (ii) the standard of need applicable to such family, and

(B) any income remaining (which amount is less than the applicable monthly standard) shall be treated as income received in the first month following the period of ineligibility specified in subparagraph (A);

(18) provide that no family shall be eligible for aid under the plan for any month if, for that month, the total income of the family (other than payments under the plan), without application of paragraph (8), other than paragraph (8)(A)(v) exceeds 150 percent of the State's standard of need for a family of the same composition;

(19) provide—

(A) that every individual, as a condition of eligibility for aid under this part, shall register for manpower services, training, employment, and other employment-related activities (including employment search, not to exceed eight weeks in total in each year) with the Secretary of Labor as provided by regulations issued by him, unless such individual is—[17]

(i) a child who is under age 16 or attending, full-time, an elementary, secondary, or vocational (or technical) school;

(ii) a person who is ill, incapacitated, or of advanced age;

(iii) a person so remote from a work incentive project that his effective participation is precluded;

(iv) a person whose presence in the home is required because of illness or incapacity of another member of the household;

(v) the parent or other relative of a child under the age of six who is personally providing care for the child with only very brief and infrequent absences from the child;

(vi) the parent or other caretaker of a child who is deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, if another adult relative is in the home and not excluded by clause (i), (ii), (iii), or (iv) of this subparagraph (unless he has failed to register as required by this subparagraph, or has been found by the Secretary of Labor[18] to have refused without good cause to participate under a work incentive program or accept employment as described in subparagraph (F) of this paragraph);

(vii) a person who is working not less than 30 hours per week;[19] or

(viii) the parent of a child who is deprived of parental support or care by reason of the unemployment of a parent, if the other parent (who is the principal earner, as defined in section 407(d)) is not excluded by the preceding clauses of this subparagraph;

and that any individual referred to in clause (v) shall be advised of his or her option to register, if he or she so desires, pursuant to this paragraph, and shall be informed of the child care services (if any) which will be available to his or her in the event he or she should decide so to register;

(B) that aid to families with dependent children[20] under the plan will not be denied by reason of such registration or the individual's certification to the Secretary of Labor under subparagraph (G) of this paragraph, or by reason of an individual's participation on a project under the program established by section 432(b) (2) or (3);

(C) for arrangements to assure that there will be made a non-Federal contribution to the work incentive programs established by part C by appropriate agencies of the State or private organizations of 10 per centum of the cost of such progams, as specified in section 432(b);[21]

(D) that (i) training incentives authorized under section 434 [22] shall be disregarded in determining the needs of an individual under [section 402(a)(7)] *paragraph (7)*, and (ii) in determining such individual's needs the additional expenses attributable to his participation in a program established by section 432(b) (2) or (3) shall be taken into account;

(F) that if (and for such period as is prescribed under joint regulations of the Secretary and the Secretary of Labor) any child, relative or individual has been found by the Secretary of Labor under section 433(g) to have refused without good cause to participate under a work incentive program established by part C with respect to which the Secretary of Labor has determined his participation is consistent with the purposes of such part C or to have refused without good cause to accept employment in which he is able to engage which is offered through the public employment offices of the State or is otherwise offered by an employer if the offer of such employer is determined, after notification by him, to be a bona fide offer of employment—

(i) if the relative makes such refusal, such relative's needs shall not be taken into account in making the determination under [clause] *paragraph* (7), and aid for any dependent child in the family in the form of payments of the type described in section 406(b)(2) (which in such a case shall be without regard to clauses (A) though [(E)] *(D)* thereof) or section [408] *472* will be made;

(ii) if the parent who has been designated as the principal earner, for purposes of section 407, makes such refusal, aid will be denied to all members of the family;

(iii) aid with respect to a dependent child will be denied if a child who is the only child receiving aid in the family makes such refusal;

(iv) if there is more than one child receiving aid in the family aid for any such child will be denied (and his needs will not be taken into account in making the determination under [clause] *paragraph* (7)) if that child makes such refusal; and

(v) if such individual makes such refusal, such individual's needs shall not be taken into account in making the determination under [clause] *paragraph* (7);

(G) that the State agency will have in effect a special program which (i) will be administered by a separate administrative unit (which will, to the maximum extent feasible, be located in the same facility as that utilized for the administration of programs established pursuant to section 432(b)(1), (2), or (3)) and the employees of which will, to the maximum extent feasible, perform services only in connection with the administration of such program, (ii) will provide (through arrangements with others or otherwise) for individuals who have been registered pursuant to subparagraph (A) of this paragraph (I), in accordance with the order of priority listed in section 433(a), such health, vocational rehabilitation, counseling, child care, and other social and supportive services as are necessary to enable such individuals to accept employment or receive manpower training provided under section 432(b)(1), (2), or (3), and will, when arrangements have been made to provide necessary supportive services, including child care, certify to the Secretary of Labor those individuals who are ready for employment or training under section 432(b)(1), (2), or (3), (II) such social and supportive services as are necessary to enable such individuals as determined appropriate by the Secretary of Labor actively to engage in other employment-related (including but not limited to employment search) activities, as well as timely payment for necessary employment search expenses, and (III) for a period deemed appropriate by the Secretary of Labor after such an individual accepts employment, such social and supportive services as are reasonable and necessary to enable him to retain such employment, (iii) will participate in the development of operational and employability plans under section 433(b); and (iv) provides for purposes of clause (ii)[,] that, when more than one kind of child care is available, the mother may choose the type, but she may not refuse to accept child care services if they are available; and

(H) that an individual participating in employment search activities shall not be referred to employment opportunities which do not meet the criteria for appropriate work and training to which an individual may otherwise be assigned under section 432(b)(1), (2), or (3);

(20) provide that the State has in effect a State plan for foster care and adoption assistance approved under part E of this title;

(21) provide—

(A) that, for purposes of this part, participation in a strike shall not constitute good cause to leave, or to refuse to seek or accept employment; and

(B)(i) that aid to families with dependent children is not payable to a family for any month in which any caretaker relative with whom the child is living is, on the last day of such month, participating in a strike, and (ii) that no individual's needs shall be included in determining the amount of aid payable for any month to a family under the plan if, on the last day of such month, such individual is participating in a strike;

(22) provide that the State agency will promptly take all necessary steps to correct any overpayment or underpayment of aid under the State plan, and, in the case of—

(A) an overpayment to an individual who is a current recipient of such aid, recovery will be made by repayment by the individual or by reducing the amount of any future aid payable to the family of which he is a member, except that such recovery shall not result in the reduction of aid payable for any month, such that the aid, when added to such family's liquid resources and to its income (without application of paragraph (8)), is less than 90 percent of the amount payable under the State plan to a family of the same composition with no other income (and, in the case of an individual to whom no payment is made for a month solely by reason of recovery of an overpayment, such individual shall be deemed to be a recipient of aid for such month);

(B) an overpayment to any individual who is no longer receiving aid under the plan, recovery shall be made by appropriate action under State law against the income or resources of the individual or the family; and

(C) an underpayment, the corrective payment shall be disregarded in determining the income of the family, and shall be disregarded in determining its resources in the month the corrective payment is made and in the following month;

(23) provide that by July 1, 1969, the amonts used by the State to determine the needs of individuals will have been adjusted to reflect fully changes in living costs since such amounts were established, and any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted;

(24) provide that if an individual is receiving benefits under title XVI, then, for the period for which such benefits are received, such individual shall not be regarded as a member of a family for purposes of determining the amount of the benefits of the family under this title and his income and

resources shall not be counted as income and resources of a family under this title;

(25) provide (A) that, as a condition of eligibility under the plan, each applicant for or recipient of aid shall furnish to the State agency his social security account number (or numbers, if he has more than one such number), and (B) that such State agency shall utilize such account numbers, in addition to any other means of identification it may determine to employ in the administration of such plan;

(26) provide that, as a condition of eligibility for aid, each applicant or recipient will be required—

(A) to assign the State any rights to support from any other person such applicant may have (i) in his own behalf or in behalf of any other family member for whom the applicant is applying for or receiving aid, and (ii) which have accrued at the time such assignment is executed,

(B) to cooperate with the State (i) in establishing the paternity of a child born out of wedlock with respect to whom aid is claimed, and (ii) in obtaining support payments for such applicant and for a child with respect to whom such aid is claimed, or in obtaining any other payments or property due such applicant or such child, unless (in either case) such applicant or recipient is found to have good cause for refusing to cooperate as determined by the State agency in accordance with standards prescribed by the Secretary, which standards shall take into consideration the best interests of the child on whose behalf aid is claimed; and that, if the relative with whom a child is living is found to be ineligible because of failure to comply with the requirements of subparagraphs (A) and (B) of this paragraph, any aid for which such child is eligible will be provided in the form of protective payments as described in section 406(b)(2) (without regard to [subparagraphs (A) through (E)] *clauses (A) through (D)* of such section);

(27) provide that the State has in effect a plan approved under part D and operate a child support program in conformity with such plan;

(28) provide that, in determining the amount of aid to which an eligible family is entitled, any portion of the amounts collected in any particular month as child support pursuant to a plan approved under part D, and retained by the State under section 457, which (under the State plan approved under this part as in effect both during July 1975 and during that particular month) would not have caused a reduction in the amount of aid paid to the family if such amounts had been paid directly to the family, shall be added to the amount of aid otherwise payable to such family under the State plan approved under this part;

(29) effective October 1, 1979, provide that wage information available from the Social Security Administration under the provisions of section 411 of this Act, and wage information available (under the provisions of section 3304(a)(16) of the Federal Unemployment Tax Act) from agencies administering State unemployment compensation laws, shall be requested

and utilized to the extent permitted under the provisions of such sections; except that the State shall not be required to request such information from the Social Security Administration where such information is available from the agency administering the State unemployment compensation laws.

(30) at the option of the State, provide for the establishment and operation, in accordance with an (initial and annually updated) advance automatic data processing planning document approved under subsection (d), of an automated statewide management information system designed effectively and efficiently, to assist management in the administration of the State plan for aid to families with dependent children approved under this part, so as (A) to control and account for (i) all the factors in the total eligibility determination process under such plan for aid (including but not limited to (I) identifiable correlation factors (such as social security numbers, names, dates of birth, home addresses, and mailing addresses (including postal ZIP codes), of all applicants and recipients of such aid and the relative with whom any child who is such an applicant or recipient is living) to assure sufficient compatibility among the systems of different jurisdictions to permit periodic screening to determine whether an individual is or has been receiving benefits from more than one jurisdiction, (II) checking records of applicants and recipients of such aid on a periodic basis with other agencies, both intra- and inter-State, for determination and verification of eligibility and payment pursuant to requirements imposed by other provisions of this Act), (ii) the costs, quality, and delivery of funds and services furnished to applicants for and recipients of such aid, (B) to notify the appropriate officials of child support, food stamp, social service, and medical assistance programs approved under title XIX whenever the case becomes ineligible or the amount of aid or services is changed, and (C) to provide for security against unauthorized access to, or use of, the data in such system.

(31) provide that, in making the determination for any month under paragraph (7), the State agency shall take into consideration so much of the income of the dependent child's stepparent living in the same home as such child as exceeds the sum of (A) the first $75 of the total of such stepparent's earned income for such month (or such lesser amount as the Secretary may prescribe in the case of an individual not engaged in fulltime employment or not employed throughout the month), (B) the State's standard of need under such plan for a family of the same composition as the stepparent and those other individuals living in the same household as the dependent child and claimed by such stepparent as dependents for purposes of determining his Federal personal income tax liability but whose needs are not taken into account in making the determination under paragraph (7), (C) amounts paid by the stepparent to individuals not living in such household and claimed by him as dependents for purposes of determining his Federal personal income tax liability, and (D) payments by such stepparent of alimony or child support with respect to individuals not living in such household;

(32) provide that no payment of aid shall be made under the plan for any month if the amount of such payment, as determined in accordance with the applicable provisions of the plan and of this part, would be less than $10, but an individual with respect to whom a payment of aid under the plan is denied solely by reason of this paragraph is deemed to be a recipient of aid but shall not be eligible to participate in a community work experience program;

(33) provide that in order for any individual to be considered a dependent child, a caretaker relative whose needs are to be taken into account in making the determination under paragraph (7), or any other person whose needs should be taken into account in making such a determination with respect to the child or relative, such individual must be either (A) a citizen, or (B) an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law (including any alien who is lawfully present in the United States as a result as a result of the application of the provisions of section 207(c) of the Immigration and Nationality Act (or of section 203(a)(7) of such Act prior to April 1, 1980), or as a result of the application of the provisions of section 208 or 212(d)(5) of such Act);

(34) provide that both the standard of need applied to a family and the mount of aid determined to be payable, when not a whole dollar amount, shall be rounded to the next lower whole dollar amount;

(35) at the option of the State, provide—

(A) that as a condition of eligibility for aid under the State plan of any individual claiming such aid who is required to register pursuant to paragraph (19)(A) (or who would be required to register under paragraph (19)(A) but for clause (iii) thereof), including all such individuals or only such groups, types, or classes thereof as the State agency may designate for purposes of this paragraph, such individual will be required to participate in a program of employment search—

(i) beginning at the time he applies for such aid (or an application including his need is filed) and continuing for a period (prescribed by the State) of not more than eight weeks (but this requirement may not be used as a reason for any delay in making a determination of an individual's eligibility for aid or in issuing a payment to or in behalf of any individual who is otherwise eligible for such aid); and

(ii) at such time or times after the close of the period prescribed under clause (i) as the State agency may determine but not to exceed a total of 8 weeks in any 12 consecutive months;

(B) that any individual participating in a program of employment search under this paragraph will be furnished such transportation and other services, or paid (in advance or by way of reimbursement) such amounts to cover transportation costs and other expenses reasonably incurred in meeting requirements imposed on him under this paragraph, as may be necessary to enable such individual to participate in such program; and

(C) that, in the case of an individual who fails without good cause to comply with requirements imposed upon him under this paragraph, the sanctions imposed by paragraph (19)(F) shall be applied in the same manner as if the individual had made a refusal of the type which would cause the provisions of such paragraph (19)(F) to be applied (except that the State may at its option, for purposes of this paragraph, reduce the period for which such sanctions would otherwise be in effect); and

(36) provide, at the option of the State, that in making the determination for any month under paragraph (7) the State agency shall not include as income any support or maintenance assistance furnished to or on behalf of the family which (as determined under regulations of the Secretary by such State agency as the chief executive officer of the State may designate) is based on need for such support and maintenance, including assistance received to assist in meeting the costs of home energy (including both heating and cooling), and which if (i) assistance furnished in kind by a private nonprofit agency, or (ii) assistance furnished by a supplier of home heating oil or gas, by an entity whose revenues are primarily derived on a rate-of-return basis regulated by a State or Federal governmental entity, or by a municipal utility providing home energy.

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(c) The Secretary shall, on the basis of his review of the reports received from the State under [clause] *paragraph* (15) of subsection (a), compile such data as he believes necessary and from time to time publish his findings as to the effectiveness of the programs developed and administered by the States under such [clause] *paragraph*. The Secretary shall annually report to the Congress (with the first such report being made on or before July 1, 1970) on the programs developed and administered by each State under such [clause] *paragraph* (15).

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PAYMENTS TO STATES

SEC. 403. (a) From the sums appropriated therefor, the Secretary of the Treasury shall pay to each State which has an approved plan for aid and services to needy families with children, for each quarter, beginning with the quarter commencing October 1, 1959—

(1) * * *

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(3) in the case of any State, an amount equal to the sum of the following proportions of the total amounts expended during such quarter as found necessary by the Secretary [of Health, Education, and Welfare] for the proper and efficient administration of the State plan—

(A) 90 per centum of so much of the sums expended during such quarter as are attributable to the planning, design, development, or installation of such statewide mechanized claims processing and information retrieval systems as (i) meet the conditions of section 402(a)(30), and (ii) the Secretary determines are likely to provide more efficient, economical, and effective administration of the plan and to be compatible with the claims processing and information retrieval systems utilized in the administration of State plans approved under title XIX, and State programs with respect to which there is Federal financial participation under title XX, and

(B) one-half of the remainder of such expenditures (including as expenditures under this subparagraph the value of any services furnished, and the amount of any payments made (to cover expenses incurred by individuals under a program of employment search), under section 402(a)(35)(B)),

except that no payment shall be made with respect to amounts expended in connection with the provision of any service described in section 2002(a) of this Act other than services furnished under section 402(a)(35)(B) (as described in the parenthetical phrase in subparagraph (C)), and other than services the provision of which is required by section 402(a)(19) to be included in the plan of the State; or which is a service provided in connection with a community work experience program or work supplemental program under section 409 or 414.

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(b) The method of computing and paying such amounts shall be as follows:

(1) The Secretary shall, prior to the beginning of each quarter, estimate the amount to be paid to the State for such quarter under the provisions of subsection (a), such estimate to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsection and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarters, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, (B) records showing the number of dependent children in the State, and (C) such other investigation as the Secretary may find necessary.

(2) The Secretary of [Health, Education, and Welfare] *Health and Human Services* shall then certify to the Secretary of the Treasury the amount so estimated by the Secretary of [Health, Education, and Welfare,] *Health and Human Services* (A) reduced or increased, as the case may be, by any sum by which the Secretary of [Health, Education, and Welfare] *Health and Human Services* finds that his estimate for any prior quarter was greater or less than the amount which should have been paid to the State for such quarter, (B) reduced by a sum equivalent to the pro rata share to which the United States is equitably entitled, as determined by the [Sec-

retary of Health, Education, and Welfare**]** *Health and Human Services,* of the net amount recovered during any prior quarter by the State or any political subdivision thereof with respect to aid to families with dependent children furnished under the State plan, and (C) reduced by such amount as is necessary to provide the "appropriate reimbursement of the Federal Government" that the State is required to make under section 457 out of that portion of child support collections retained by it pursuant to such section; except that such increases or reductions shall not be made to the extent that such sums have been applied to make the amount certified for any prior quarter greater of less than the amount estimated by the Secretary of **[**Health, Education, and Welfare**]** *Health and Human Services* for such prior quarter.

(3) The Secretary of the Treasury shall thereupon, through **[**the Fiscal Service of the Treasury Department**]** *the Fiscal service of the Department of the Treasury* and prior to audit or settlement by the General Accounting Office, pay to the State, at the time or times fixed by the Secretary of **[**Health, Education, and Welfare**]** *Health and Human Services,* the amount so certified.

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(j) In the case of Puerto Rico, Guam, or the Virgin Islands, if the dollar error rate of aid furnished by such State under its State plan approved under this part with respect to any six-month period, as based on samples and evaluations thereof, is—

(1) at least 4 per centum, the amount of the Federal financial participation in the expenditures made by the State in carrying out such plan during such period shall be determined without regard to the provisions of this subsection; or

(2) less than 4 per centum, the amount of the Federal financial participation in the expenditures made by the State in carrying out such plan during such period shall be the amount determined without regard to this subsection, plus, of the amount by which such expenditures are less than they would have been if the erroneous excess payments of aid had been at a rate of 4 per centum—

(A) 10 per centum of the Federal share of such amount, in case such rate is not less than 3.5 per centum,

(B) 20 per centum of the Federal share of such amount, in case such rate is at least 3.0 per centum but less than 3.5 per centum,

(C) 30 per centum of the Federal share of such amount, in case such rate is at least 2.5 per centum but less than 3.0 per centum,

(D) 40 per centum of the Federal share of such amount, in case such rate is at least 2.0 per centum but less than 2.5 per centum,

(E) 50 per centum of the Federal share of such amount, in case such rate is less than 2.0 per centum.

For purposes of this subsection (i) the term "dollar error rate of aid" means the total of the dollar error rates of aid for (I) payments to ineligible families receiving assistance; (II) overpayments to eligible families receiving assistance; (III) underpayments to eligible families receiving assistance; and (IV) nonpayments to eligible families not receiving assistance due to erroneous terminations or denials, and (ii) the term "erroneous excess payment[,]" means the total (I) erroneous payments to ineligible families receiving asstance, and (II) overpayments to eligible families receiving assistance.

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DEFINITIONS

SEC. 406. When used in this part—

(a)* * *

(b) The term "aid to families with dependent children" means money payments with respect to a dependent child or dependent children, or, at the option of the State, a pregnant woman but only if it has been medically verified that the child is expected to be born in the month such payments are made or within the three-month period following such month of payment, and who, if such child had been born and was living with her in the month of payment, would be eligible for aid to families with dependent children, and includes (1) money payments to meet the needs of the relative with whom any dependent child is living (and the spouse of such relative if living with him and if such relative is the child's parent and the child is a dependent child by reason of the physical or mental incapacity of a parent or is a dependent child under section 407, and (2) payments with respect to any dependent child (including payments to meet the needs of the relative, and the relative's spouse, with whom such child is living, and the needs of any other individual living in the same home if such needs are taken into account in making the determination under section 402(a)(7)) which do not meet the preceding requirements of this subsection, but which would meet such requirements except that such payments are made to another individual who (as determined in accordance with standards prescribed by the Secretary) is interested in or concerned with the welfare of such child or relative, or are made on behalf of such child or relative directly to a person furnishing food, living accommodations, or other goods, services, or items to or for such child, relative, or other individual, but only with respect to a State whose State plan approved under section 402 includes provision for—

(A) determination by the State agency that the relative of the child with respect to whom such payments are made has such inability to manage funds that making payments to him would be contrary to the welfare of the child and, therefore, it is necessary to provide such aid with respect to such child and relative through payments described in this clause (2);

(B) undertaking and continuing special efforts to develop greater ability on the part of the relative to manage funds in such manner as to protect the welfare of the family;

(C) periodic review by such State agency of the determination under clause (A) to ascertain whether conditions justifying such determination still exist, with provision for termination of such payments if they do not and for seeking judicial appointment of a guardian or other legal representative, as described in section 1111, if and when it appears that the need for such payments is continuing, or is likely to continue, beyond a period specified by the Secretary; *and*

[(D) aid in the form of foster home care in behalf of children described in section 408(a); and]

[(E)] *(D)* opportunity for a fair hearing before the State agency on the determination referred to in clause (A) for any individual with respect to whom it is made.

Payments with respect to a dependent child which are intended to enable the recipient to pay for specific goods, services, or items recognized by the State agency as a part of the child's need under the State plan may (in the discretion of the State or local agency administering the plan in the political subdivision) be made, pursuant to a determination referred to in clause (2)(A), in the form of checks drawn jointly to the order of the recipient and the person furnishing such goods, services, or items and negotiable only upon endorsement by both such recipient and such person; and payments so made shall be considered for all of the purposes of this part to be payments described in clause (2). Whenever payments with respect to a dependent child are made in the manner described in clause (2) (including payments described in the preceding sentence), a statement of the specific reasons for making such payments in that manner (on which the determination under clause (2)(A) was based) shall be placed in the file maintained with respect to such child by the State or local agency administering the State plan in the political subdivision. Payments of the type described in clause (2) shall not be subject to the requirements of [clauses (A) through (E)] *clauses (A) through (D)* of such clause (2), when they are made in the manner described in clause (2) at the request of the family member to whom payment would otherwise be made in an unrestricted manner.

* * * * * * *

DEPENDENT CHILDREN OF UNEMPLOYED PARENTS

SEC. 407. (a) The term "dependent child" shall, notwithstanding section 406(a), include a needy child who meets the requirements of section 406(a)(2), who has been deprived of parental support or care by reason of the unemployment (as determined in accordance with standards prescribed by the Secretary) of the parent who is the principal earner, and who is living with any of the relatives specified in section 406(a)(1) in a place of residence maintained by one or more of such relatives as his (or their) own home.

(b) The provisions of subsection (a) shall be applicable to a State if the State's plan approved under section 402—

(1) requires the payment of aid to families with dependent children with respect to a dependent child as defined in subsection (a) when—

(A) whichever of such child's parents is the principal earner has not been employed (as determined in accordance with the standards prescribed by the Secretary) for at least 30 days prior to the receipt of such aid,

(B) such parent has not without good cause, within such period (of not less than 30 days) as may be prescribed by the Secretary, refused a bona fide offer of employment or training for employment, and

(C)(i) such [father] *parent* has 6 or more quarters of work (as defined in subsection (d)(1)) in any 13-calendar-quarter period ending within one year prior to the application for such aid or (ii) [he] *such parent* received unemployment compensation under an unemployment compensation law of a State or of the United States, or [he] *such parent* was qualified (within the meaning of subsection (d)(3)) for unemployment compensation under the unemployment compensation law of the State, within one year prior to the application for such aid; and

(2) provides—

(A) for such assurances as will satisfy the Secretary that unemployed parents of dependent children as defined in subsection (a) will be certified to the Secretary of Labor as provided in section 402(a)(19) within [thirty] *30* days after receipt of aid with respect to such children;

(B) for entering into cooperative arrangements with the State agency responsible for administering or supervising the administration of vocational education in the State, designed to assure maximum utilization of available public vocational education services and facilities in the State in order to encourage the retraining of individuals capable of being retrained;

* * * * * * *

(e) The Secretary of [Health, Education, and Welfare] and the Secretary of Labor shall jointly enter into an agreement with each State which is able and willing to do so for the purpose of (1) simplifying the procedures to be followed by unemployed parents and other unemployment persons in such State in registering pursuant to section 402(a)(19) for the work incentive program established by part C of this title and in registering with public employment offices (under this section and otherwise) or in connection with applications for unemployment compensation, by reducing the number of locations or agencies where such persons must go in order to register for such programs and in connection with such applications, and (2) providing where possible for a single registration satisfying this section and the reqruirements of both the work incentive program and the applicable unemployment compensation laws.

COMMUNITY WORK EXPERIENCE PROGRAMS

SEC. 409. (a)(1) Any State which chooses to do so may establish a community work experience program in accordance with this section. The purpose of the community work experience program is to provide experience and training for individuals not otherwise able to obtain employment, in order to assist them to move into regular employment. Community work experience programs shall be designed to improve the employability of participants through actual work experience and training and to enable individuals employed under community work experience programs to move promptly into regular public or private employment. The facilities of the State public employment offices may be utilized to find employment opportunities for recipients under this program. Community work experience programs shall be limited to projects which serve a useful public purpose in fields such as health, social service, environmental protection, education, urban and rural development and redevelopment, welfare, recreation, public facilities, public safety, and day care. To the extent possible, the prior training, experience, and skills of a recipient shall be utilized in making appropriate work experience assignments. A community work experience program established under this section shall provide—

(A) appropriate standards for health, safety, and other conditions applicable to the performance of work;

(B) that the program does not result in displacement of persons currently employed, or the filling of established unfilled position [vacanies] *vacancies*;

(C) reasonable conditions of work, taking into account the geographic region, the residence of the participants, and the proficiency of the participants;

(D) that participants will not be required, without their consent, to travel an unreasonable distance from their homes or remain away from their homes overnight;

(E) that the maximum number of hours in any month that a participant may be required to work is that number which equals the amount of aid payable with respect to the family of which such individual is a member under the State plan approved under this part, divided by the greater of the Federal or the applicable State minimum wage; and

(F) that provision will be made for transportation and other costs, not in excess of an amount established by the Secretary, reasonably necessary and directly related to participation in the program.

(2) Nothing contained in this section shall be construed as authorizing the payment of aid under this part as compensation for work performed, nor shall a participant be entitled to a salary or to any other work or training expense provided under any other provision of law by reason of his participation in a program under this section.

(3) Nothing in this part or part C, or in any State plan approved under this part, shall be construed to prevent a State from operating (on such terms and conditions and in such cases as the State may find to be necessary or appropriate, whether or not such terms, conditions, and cases are consistent with section 402(a)(19) or part [(C))] *C)* a community work experience program in accordance with this section.

* * * * * * *

FOOD STAMP DISTRIBUTION

SEC. 410. (a) Any State plan for aid and services to needy families with children may (but is not required under this title or any other provision of Federal law to) provide for the institution of procedures, in any or all areas of the State, by the State agency administering or supervising the administration of such plan under which any household participating in the food stamp program established by the Food Stamp Act of [1964] *1977,* as amended, will be entitled, if it so elects, to have the charges, if any, for its coupon allotment under such program deducted from any aid, in the form of money payments, which is (or, except for the deduction of such charge, would be) payable to or with respect to such household (or any member or members thereof) under such plan and have its coupon allotment distributed to it with such aid.

(b) Any deduction made pursuant to an option provided in accordance with subsection (a) shall not be considered to be a payment described in section 406(b)(2).

(c) Notwithstanding any other provision of law, no agency which is designated as a State agency for any State under or pursuant to the Food Stamp Act of [1964] *1977,* as amended, shall be regarded as having failed to comply with any requirement imposed by or pursuant to such Act solely because of the failure, of the State agency administering or supervising the administration of the State plan (approved under this part) of such State, to institute or carry out a procedure, described in subsection (a).

* * * * * * *

ATTRIBUTION OF SPONSOR'S INCOME AND RESOURCES TO ALIEN

SEC. 415. (a) For purposes of determining eligiblity for and the amount of benefits under a State plan approved under this part for an individual who is an alien described in clause (B) of section 402(a)(33), the income and resources of any person who (as a sponsor of such individual's entry into the United States) executed an affidavit of support or similar agreement with respect to such individual and the income and resources of the sponsor's spouse, shall be deemed to be the unearned income and resources of such individual (in accordance with subsections (b) and (c)) for a period of three years after the individual's entry into the United States, except that this section is not applicable if such individual is a dependent child and such sponsor (or such sponsor's spouse) is the parent of such child.

(b)(1) The amount of income of a sponsor (and his spouse) which shall be deemed to be the unearned income of an alien for any month shall be determined as follows:

(A) the total amount of earned and unearned income of such sponsor and such sponsor's spouse (if such spouse is living with the sponsor) shall be determined for such month;

(B) the amount determined under subparagraph (A) shall be reduced by an amount equal to the sum of—

(i) the lesser of (I) 20 percent of the total of any amounts received by the sponsor and his spouse in such month as wages or salary or as net earnings from self-employment, plus the full amount of any costs incurred by them in producing self-employment income in such month, or (II) $175;

(ii) the cash needs standard established by the State under its plan for a family of the same size and composition as the sponsor and those other individuals living in the same household as the sponsor who are claimed by him as dependents for purposes of [determinig] *determin-*

ing his Federal personal income tax liability but whose needs are not taken into account in making a determination under section 402(a)(7);

(iii) any amounts paid by the sponsor (or his spouse) to individuals not living in such household who are claimed by him as dependents for purposes of determining his Federal personal income tax liability; and

(iv) any payments of alimony or child support with respect to individuals not living in such household.

* * * * * * *

PART B—CHILD WELFARE SERVICES

APPROPRIATION

SEC. 420. (a) For the purpose of enabling the United States, through the Secretary, to cooperate with State public welfare agencies in establishing, extending, and strengthening child welfare services, there is authorized to be appropriated for each fiscal year the sum of $266,000,000.

(b) Funds appropriated for any fiscal year pursuant to the authorization contained in subsection (a) shall be included in the appropriation Act (or supplemental appropriation Act) for the fiscal year preceding the fiscal year for which such funds are available for obligation. In order to effect a transition to this method of timing appropriation action, the preceding sentence [,] shall apply notwithstanding the fact that its initial application will result in the enactment in the same year (whether in the same appropriation Act or otherwise) of two separate appropriations, one for the then current fiscal year and one for the succeeding fiscal year.

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PART C—WORK INCENTIVE PROGRAM FOR RECIPIENTS OF AID UNDER STATE PLAN APPROVED UNDER PART A

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APPROPRIATION

SEC. 431. (a) There is hereby authorized to be appropriated to the Secretary of [Health, Education, and Welfare] *Health and Human Services* for each fiscal year a sum sufficient to carry out the purposes of this part. The Secretary of [Health, Education, and Welfare] *Health and Human Services* shall transfer to the Secretary of Labor from time to time sufficient amounts, out of the moneys appropriated pursuant to this section, to enable him to carry out such purposes.

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ESTABLISHMENT OF PROGRAMS

SEC. 432. (a) * * *

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(d) In providing the training and employment services and opportunities required by this part, the Secretary [of Labor] shall, to the maximum extent feasible, assure that such services and opportunities are provided by using all authority available under this or any other Act. In order to assure that the services and opportunities so required are provided, the Secretary [of Labor] (1) shall assure, when appropriate, that registrants under this part are referred for training and employment services under the Job Training Partnership Act, and (2) may use the funds appropriated under this part to provide programs required by this part through such other Acts to the same extent and under the same conditions (except as regards the Federal matching percentage) as if appropriated under such other Act and, in making use of the programs of other Federal, State, or local agencies (public or private), the Secretary [of Labor] may reimburse such agencies for services rendered to individuals under this part to the extent that such services and opportunities are not otherwise available on a nonreimbursable basis.

* * * * * * *

(f)(1) The Secretary [of Labor] shall utilize the services of each private industry council (as established under the Job Training Partnership Act) to identify and provide advice on the types of jobs available or likely to become available in the service delivery area of such council.

* * * * * * *

OPERATION OF PROGRAM

SEC. 433. (a) * * *

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(g) Where an individual, certified to the Secretary [of Labor] pursuant to section 402(a)(19)(G) refuses without good cause to accept employment or participate in a project under a program established by this part, the Secretary [of Labor] shall (after providing opportunity for fair hearing) notify the State agency which certified such individual and submit such other information as he may have with respect to such refusal.

* * * * * * *

INCENTIVE PAYMENT

SEC. 434. (a) The Secretary is authorized to pay to any participant under a program established by section 432(b)(2) an incentive payment of not more than $30 per month, payable in such amounts and at such times as the Secretary prescribes.

(b) The Secretary [of Labor] is also authorized to pay, to any member of a family participating in manpower training under this part, allowances for transportation and other costs incurred by such member, to the extent such costs are necessary to and directly related to the participation by such member in such training.

* * * * * * *

PERIOD OF ENROLLMENT

SEC. 436. (a) The program established by section 432(b)(2) shall be designed by the Secretary so that the average period of enrollment under all projects under such program throughout any area of the United States will not exceed one year.

(b) Services provided under this part may continue to be provided to an individual for such period as the Secretary determines (in accordance with regulations prescribed jointly by him and the Secretary of [Health, Education, and Welfare] *Health and Human Services)* is necessary to qualify him fully for employment even though his earnings disqualify him from aid under a State plan approved under section 402.

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RULES AND REGULATIONS

SEC. 439. The Secretary and the Secretary of [Health, Education, and Welfare] *Health and Human Services,* shall, not later than July 1, 1972, issue regulations to carry out the purposes of this part. Such regulations shall provide for the establishment, jointly by the Secretary and the Secretary of [Health, Education, and Welfare] *Health and Human Services,* of (1) a national coordination committee the duty of which shall be to establish uniform reporting and similar requirements for the administration of this part, and (2) a regional coordination committee for each region which shall be responsible for review and approval of statewide operational plans developed pursuant to section 433(b).

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EVALUATION AND RESEARCH

SEC. 441. [(a)] The Secretary shall (jointly with the Secretary of [Health, Education, and Welfare] *Health and Human Services* provide for the continuing evaluation of the work incentive programs established by this part, including their effectiveness in achieving stated goals and their impact on other related programs. He also may conduct research regarding ways to increase the effectiveness of such programs. He may, for this purpose, contract for independent evaluations of and research regarding such programs or individual projects under such programs. For purposes of sections 435 and 443, the costs of carrying out this section shall not be regarded as costs of carrying out work incentive programs established by this part. Nothing in this section shall be construed as authorizing the Secretary to enter into any contract with any organization after June 1, 1970, for the dissemination by such organization of information about programs authorized to be carried on under this part.

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COLLECTION OF STATE SHARE

SEC. 443. If a non-Federal contribution of 10 per centum of the costs of the work incentive programs established by this part is not made in any State (as specified in section 402(a)), the Secretary of [Health, Education, and Welfare] *Health and Human Services* may withhold any action under section 404 because of the State's failure to comply substantially with a provision required by section 402. If the Secretary of [Health, Education, and Welfare] *Health and Human Services* does withhold such action, he shall, after reasonable notice and opportunity for hearing to the appropriate State agency or agencies, withhold any payments to be made to the State under sections 3(a), 403(a), 1003(a), 1403(a), 1603(a), and 1903(a) until the amount so withheld (including any amounts contributed by the State pursuant to the requirement in section 402(a)(19)(C) equals 10 per centum of the costs of such work incentive programs. Such withholding shall remain in effect until such time as the Secretary has assurances from the State that such 10 per centum will be contributed as required by section 402. Amounts so withheld shall be deemed to have been paid to the State under such section and shall be paid by the Secretary of [Health, Education, and Welfare] *Health and Human Services* to the Secretary. Such payment shall be considered a non-Federal contribution for purposes of section 435.

AGREEMENTS WITH OTHER AGENCIES PROVIDING ASSISTANCE TO FAMILIES OF UNEMPLOYED PARENTS

SEC. 444. (a) The Secretary ia authorized to enter into an agreement (in accordance with the succeeding provisions of this section) with any qualified State agency (as described in subsection (d)) under which the program established by the preceding sections of this part C will (except as otherwise provided in this section) be applicable to individuals certified by such State agency in the same manner, to the same extent, and under the same conditions as such program is applicable with respect to individuals certified to the Secretary by a State agency administering or supervising the administration of a State plan approved by the Secretary of [Health, Education, and Welfare] *Health and Human Services* under part A of this title.

* * * * * * *

(d) The Secretary shall, at the request of any qualified State agency referred to in subsection (a) of this section and upon receipt from it of a list of the names of individuals [rereferred] *referred* to the Secretary, furnish to such agency the names of each individual on such list participating in public service employment under section 433(a)(3) whom the Secretary determines should continue to participate in such employment. The Secretary shall not comply with any such request with respect to an individual on such list unless such individual has been certified to the Secretary by such agency under section 402(a)(19)(G) for a period of at least six months.

WORK INCENTIVE DEMONSTRATION PROGRAM

SEC. 445. (a) Notwithstanding any other provision of this part and part A of this title, any State may elect as an alternative to the work incentive program otherwise provided in this part, and subject to the provision of this section, to operate a work incentive demonstration program for the purpose of demonstrating single agency administration of the work-related objectives of this Act, and to receive payments under the provisions of this section.

(b)(1) Not later than June 30, 1984, the Governor of a State which desires to operate a work incentive demonstration program under this section shall submit to the Secretary of Health and Human Services a letter of application stating such intent. Accompanying the letter of application shall be a State program plan which must—

(A) provide that the agency conducting the demonstration program within the State shall be the single State agency which administers or supervises the administration of the State plan under part A of this title;

(B) provide that all persons eligible for or receiving assistance under the aid to families with dependent children program shall be eligible to participate in, and shall be required to participate in, the work incentive demonstration program, subject to the same criteria for participation in such demonstration program as are in effect under this part and part A during the month before the month in which the demonstration program commences, but subject to waiver of such criteria as provided under section 115.

(C) provide that the criteria for participation in the work incentive demonstration program shall be uniform throughout the State;

(D) provide a statement of the objectives which the State expects to meet through operation of a work incentive demonstration program, with emphasis on how the State expects to maximize client placement in nonsubsidized private sector employment;

(E) describe the techniques to be used to achieve the objectives of the work incentive demonstration program, which may include but shall not be limited to: maximum periods of participation, jobs training, job find clubs, grant diversion to either public or private sector employers, services contracts with State employment services, prime sponsors under the [Comprehensive Employment and Training Act of 1973] *Job Training Partnership Act,* or private placement agencies, targeted jobs tax credit outreach campaigns, and performance-based placement incentives; and

(F) set forth the format and frequency of reporting of information regarding operation of the work incentive demonstration program.

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PART D—CHILD SUPPORT AND ESTABLISHMENT OF PATERNITY

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DUTIES OF THE SECRETARY

Sec. 452. (a) The Secretary shall establish, within the Department of [Health, Education, and Welfare] *Health and Human Services* a separate organizational unit, under the direction of a designee of the Secretary, who shall report directly to the Secretary and who shall—

(1) establish such standards for State programs for locating absent parents, establishing paternity, and obtaining child support and support for the spouse (or former spouse) with whom the absent parent's child is living as he determines to be necessary to assure that such programs will be effective;

(2) establish minimum organizational and staffing requirements for State units engaged in carrying out such programs under plans approved under this part;

(3) review and approve State plans for such programs;

(4) evaluate the implementation of State programs established pursuant to such plan, conduct such audits of State programs established under the plan approved under this part as may be necessary to assure their conformity with the requirements of this part, and, not less often than annually, conduct a complete audit of the programs established under such plan in each State and determine for the purposes of the penalty provision of section 403(h) whether the actual operation of such programs in each State conforms to the requirements of this part;

(5) assist States in establishing adequate reporting procedures and maintain records of the operations of programs established pursuant to this part in each State;

(6) maintain records of all amounts collected and disbursed under programs established pursuant to the provisions of this part and of the costs incurred in collecting such amounts;

(7) provide technical assistance to the States to help them establish effective systems for collecting child and spousal support and establishing paternity;

(8) receive applications from States for permission to utilize the courts of the United States to enforce court orders for support against absent parents and, upon a finding that (A) another State has not undertaken to enforce the court order of the originating State against the absent parent within a reasonable time, and (B) that utilization of the Federal courts is the only reasonable method of enforcing such order, approve such applications;

(9) operate the Parent Locator Service established by section 453; and

(10) not later than three months after the end of each fiscal year, beginning with the year 1977, submit to the Congress a full and complete report on all activities undertaken pursuant to the provisions of this part, which report shall include, but not be limited to, the following:

(A) total program costs and collections set forth in sufficient detail to show the cost to the States and the Federal

Government, the distribution of collections to families, State and local governmental units, and the Federal Government; and an identification of the financial impact of the provisions of this part;

(B) costs and staff associated with the Office of Child Support Enforcement;

(C) the number of child support cases (with separate identification of the number in which collection of spousal support was involved) in each State during each quarter of the fiscal year last ending before the report is submitted and during each quarter of the preceding fiscal year (including the transitional period beginning July 1, 1976, and ending September 30, 1976, in the case of the first report to which this subparagraph applies), and the disposition of such cases;

(D) the status of all State plans under this part as of the end of the fiscal year last ending before the report is submitted, together with an explanation of any problems which are delaying or preventing approval of State plans under this part;

(E) data, by State, on the use of the Federal Parent Locator Service, and the number of locate requests submitted without the absent parent's social security account number;

(F) the number of cases, by State, in which an applicant for or recipient of aid under a State plan approved under part A has refused to cooperate in identifying and locating the absent parent and the number of cases in which refusal so to cooperate is based on good cause (as determined in accordance with the standards referred to in section 402(a)(26)(B)(ii));

(G) data, by State, or the use of Federal courts and on use of the Internal Revenue Service for collections, the number of court orders on which collections were made, the number of paternity determinations made and the number of parents located, in sufficient detail to show the cost and benefits to the States and to the Federal Government; and

(H) the major problems encountered which have delayed or prevented implementation of the provisions of this part during the fiscal year last ending prior to the submission of such report.

The information contained in any such report under subparagraph (A) shall specifically include (i) the total amount of child support payments collected as a result of services furnished during the fiscal year involved to individuals under section 454(6), (ii) the cost to the States and to the Federal Government of furnishing such services to those individuals, and (iii) the extent to which the furnishing of such services was successful in providing sufficient support to those individuals to assure that they did not require assistance under the State plan approved under part A.

* * * * * * *

(c)(1) There is hereby established in the Treasury a revolving fund which shall be available to the Secretary without fiscal year limitation, to enable him to pay to the States for distribution in accordance with the provisions of section 457 such amounts as may be collected and paid (subject to paragraph (2)) into such fund under section 6305 of the Internal Revenue Code of 1954.

(2) There is hereby appropriated to the fund, out of any moneys in the Treasury not otherwise appropriated, amounts equal to the amounts collected under section 6305 of the Internal Revenue Code of 1954, reduced by the amounts credited or refunded as overpayments of the amounts so collected. The amounts appropriated by the preceding [section] *sentence* shall be transferred at least quarterly from the general fund of the Treasury to the fund on the basis of estimates made by the Secretary of the Treasury. Proper adjustments shall be made in the amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

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PARENT LOCATOR SERVICE

SEC. 453. (a) * * *

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(b) Upon request, filed in accordance with subsection (d) of any authorized person (as defined in subsection (c)) for the most recent address and place of employment of any absent parent, the Secretary shall, notwithstanding any other provision of law, provide through the Parent Locator Service such information to such person, if such information—

(1) is contained in any files or records maintained by the Secretary or by the Department of [Health, Education, and Welfare] *Health and Human Services*; or

(2) is not contained in such files or records, but can be obtained by the Secretary, under the authority conferred by subsection (e), from any other department, agency, or instrumentality, [or] *of* the United States or of any State.

No information shall be disclosed to any person if the disclosure of such information would contravene the national policy or security interests of the United States or the confidentiality of census data. The Secretary shall give priority to requests made by any authorized person described in subsection (c)(1).

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STATE PLAN FOR CHILD AND SPOUSAL SUPPORT

SEC. 454. A State plan for child and spousal support must—

(1) * * *

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(8) provide that the agency administering the plan will establish a service to locate absent parents utilizing—

(A) all sources of information and available records, and

(B) the Parent Locator Service in the Department of [Health, Education, and Welfare] *Health and Human Services*;

(9) provide that the State will, in accordance with standards prescribed by the Secretary, cooperate with any other State—

(A) in establishing paternity, if necessary,

(B) in locating an absent parent residing in the State (whether or not permanently) against whom any action is being taken under a program established under a plan approved under this part in another State,

(C) in securing compliance by an absent parent residing in such State (whether or not permanently) with an order issued by a court of competent jurisdiction against such parent for the support and maintenance of the child or children or the parent of such child or children [of such parent] with respect to whom aid is being provided under the plan of such other State, and

(D) in carrying out other functions required under a plan approved under this part;

* * * * * * *

(16) provide, at the option of the State, for the establishment, in accordance with an (initial and annually updated) advance automatic data processing planning document approved under section 452(d), of an automatic data processing and information retrieval system designed effectively and efficiently to assist management in the administration of the State plan, in the State and localities thereof, so as (A) to control, account for, and monitor (i) all the factors in the support enforcement collection and paternity determination process under such plan (including, but not limited to, (I) identifiable correlation factors (such as social security numbers, names, dates of birth, home addresses and mailing addresses (including postal ZIP codes) of any individual with respect to whom support obligations are sought to be established or enforced and with respect to any person to whom such support obligations are owing) to assure sufficient compatibility among the systems of different jurisdictions to permit periodic screening to determine whether such individual is paying or is obligated to pay support in more than one jurisdiction, (II) checking of records of such individuals on a periodic basis with Federal, intra- and inter-State, and local agencies, (III) maintaining the data necessary to meet the Federal reporting requirements on a timely basis, and (IV) delinquency and enforcement activities), (ii) the collection and distribution of support payments (both intra- and inter-State), the determination, [collection and distribution,] *collection, and distribution* of incentive payments both inter- and intra-State, and the maintenance of accounts receivable on all amounts owed, collected and distributed, and (iii) the costs of all services rendered, either directly or by interfacing with State financial management and expenditure information, (B) to provide interface with records of the State's aid to families with dependent children program in order to determine if a collection of a support payment causes a change affecting eligibility for or the amount of aid under such program, (C) to provide for security against unauthorized access to, or use of, the data in such system, and (D) to provide management informa-

tion on all cases under the State plan from initial referral or application through collection and enforcement;

[THE INDENTATION OF THE FOLLOWING PARAGRAPH (17) IS REALIGNED BY THE BILL TO CONFORM TO THE PRECEDING PARAGRAPHS]

(17) in the case of a State which has in effect an agreement with the Secretary entered into pursuant to section 463 for the use of the Parent Locator Service established under section 453, [to] *provide that the State will* accept and transmit to the Secretary requests for information authorized under the provisions of the agreement to be furnished by such Service to authorized persons, [and to] *will* impose and collect (in accordance with regulations of the Secretary) a fee sufficient to cover the costs to the State and to the Secretary incurred by reasons of such requests, [to] *will* transmit to the Secretary from time to time (in accordance with such regulations) so much of the fees collected as are attributable to such costs to the Secretary so incurred, and during the period that such agreement is in effect[, otherwise to] *will otherwise* comply with such agreement and regulations of the Secretary with respect thereto;

* * * * * * *

SUPPORT OBLIGATION

Sec. 456. (a)*(1)* The support rights assigned to the State under section 402(a)(26) shall constitute an obligation owed to such State by the individual responsible for providing such support. Such obligation shall be deemed for collection purposes to be collectible under all applicable State and local processes.

[(1)] *(2)* The amount of such obligation shall be—

(A) the amount specified in a court order which covers the assigned support rights, or

(B) if there is no court order, an amount determined by the State in accordance with a formula approved by the Secretary, and

[(2)] *(3)* Any amounts collected from an absent parent under the plan shall reduce, dollar for dollar, the amount of his obligation under [paragraphs (1)(A) and (B)] *subparagraphs (A) and (B) of paragraph (2).*

(b) A debt which is a child support obligation assigned to a State under section 402(a)(26) is not released by a discharge in bankruptcy under title 11. United States Code.

* * * * * * *

INCENTIVE PAYMENT TO [STATES] *STATES* AND LOCALITIES

Sec. 458. (a) When a political subdivision of a State makes, for the State of which it is political subdivision, or one State makes, for another State, or a State on its own behalf makes, the enforcement and collection of the support rights assigned under section 402(a)(26) (either within or outside or such State), there shall be paid to such political subdivision, such other State, or such State (in the case of a State which on its behalf makes such enforcement and collection) from amounts which would otherwise represent the Federal share of assistance to the family of the absent parent an amount equal to 12 percent of any amount collected and required to be distributed as provided in section 467 to reduce or repay assistance payments.

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CIVIL ACTIONS TO ENFORCE SUPPORT OBLIGATIONS

SEC. 460. The district courts of the United States shall have jurisdiction, without regard to any amount in controversy, to hear and determine any civil action certified by the Secretary of **[**Health, Education and Welfare**]** *Health and Human Services* under section 452(a)(8) of this Act. A civil action under this section may be brought in any judicial district in which the claim arose, the plaintiff resides, or the defendant resides.

* * * * * * *

DEFINITIONS

SEC. 462. For purposes of section 459—

(a) * * *

* * * * * * *

(f) Entitlement of an individual to any money shall be deemed to be "based upon remuneration for employment", if such money consists of—

(1) compensation paid or payable for personal services of such individual, whether such compensation is denominated as wages, salary, commission, bonus, pay, or otherwise, and includes but is not limited to, severance pay, sick pay, and incentive pay, but does not include awards for making suggestions, or

(2) periodic benefits (including a periodic benefit as defined in section 228(h)(3) of this Act) or other payments to such individual under the insurance system established by title II of this Act or any other system or fund established by the United States (as defined in subsection (a)) which provides for the payment of pensions, retirement or retired pay, annuities, **[**dependents**]** *dependents'* or survivors' benefits, or similar amounts payable on account of personal services performed by himself or any other individual (not including any payment as compensation for death under any Federal program, any payment under any Federal program established to provide "black lung" benefits, any payments by the Veterans' Administration as pension, or any payments by the Veterans' Administration as compensation for a service-connected disability or death, except any compensation paid by the Veterans' Administration to a former member of the Armed Forces who is in receipt of retired or retainer pay if such former member has waived a portion of his retired pay in order to receive such compensation), and does not consist of amounts paid, by way of reim-

bursement or otherwise, to such individual by his employer to defray expenses incurred by such indiviudal in carrying out duties associated with his employment.

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PART E—FEDERAL PAYMENTS FOR FOSTER CARE AND ADOPTION ASSISTANCE

* * * * * * *

PAYMENTS TO STATES; ALLOTMENTS TO STATES

Sec. 474. (a) * * *

(b)(1) Notwithstanding the provisions of subsections (a)(1) and (a)(3), the aggregate of the sums payable thereunder to any State (other than a State subject to limitation under section 1108(a)) with respect to expenditures relating to foster care, for the calendar quarters in any of the fiscal years 1981 through 1984 in which the conditions set forth in paragraph (2) are met, shall not exceed the State's allotment for such year.

(2)(A) The limitation in paragraph (1) shall apply—

(i) with respect to fiscal year 1981, only if the amount appropriated under section 420 for such fiscal year is equal to or greater than $163,550,000;

(ii) with respect to fiscal year 1982, only if the amount appropriated under section 420 for such fiscal year is equal to or greater than $220,000,000;

(iii) with respect to fiscal year 1983, only if the amount appropriated under section 420 for such fiscal year is equal to $266,000,000; and

(iv) with respect to fiscal year 1984, only if the amount appropriated under section 420 for such fiscal year is equal to $266,000,000.

(B) The limitations set forth in paragraph (1) with respect to the fiscal years 1982 through 1984 shall apply only if the required appropriation is made in advance in an appropriation Act (as authorized under section 420(b)) for the fiscal year preceding the fiscal year to which the limitation would apply.

(3) For purposes of this subsection, a State's allotment for any fiscal year shall be the greater of—

(A) the amount determined under paragraph (4);

(B) an amount which bears the same ratio to $100,000,000 as the under age eighteen population of such State bears to the under age eighteen population of the fifty States and the District of Columbia; or

(C) at the option of the State, an amount determined under paragraph (5), but only in the case of a State which meets the requirements of such paragraph (5).

(4) For purposes of paragraph (3)(A), a State's allotment shall be determined as follows:

(A) The allotment for any State for fiscal year 1980 shall be an amount equal to such State's base amount (as determined under subparagraph **[(c)]** *(C)*) increased by 21.2 percent.

* * * * * * *

(c)(1) Except as provided in paragraphs (3) and (4), for any of the fiscal years 1981 through 1984 during which the limitation under subsection (b)(1) is in effect, sums available to a State from its allotment under subsection (b) for carrying out this part, which the State does not claim as reimbursement for expenditures in such year pursuant to subsection (a) of this section, may be claimed by the State as reimbursement for expenditures in such year pursuant to part B of this title, in addition to sums available pursuant to section 420 for carrying out part B.

(2) Except as provided in paragraphs (3) and (4), for any of the fiscal years 1981 through 1984 during which the limitation under subsection (b)(1) is not in effect, a State may claim as reimbursement for expenditures for such year pursuant to part B of this title, in addition to amounts claimed under section 420, an amount equal to the amount by which the State's allotment amount for such fiscal year (as determined under subsection (b)(3)) exceeds the amount claimed by such State for such fiscal year as reimbursement for expenses relating to foster care under subsection (a); except that the total amount claimed by such State for such fiscal year under this paragraph, when added to the amount that such State receives for such fiscal year under section 420, may not exceed the amount that would have been payable to such State under section 420 for such fiscal year if the [relvant] *relevant* amount described in subsection (b)(2)(A) had been appropriated for such fiscal year.

* * * * * * *

(d)(1) The Secretary shall, prior to the beginning of each quarter, estimate the amount to which a State will be entitled under subsections (a), (b), and (c) for such quarter, such estimates to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsections, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, (B) records showing the number of children in the State receiving assistance under this part, and [(c)] *(C)* such other investigation as the [secretary] *Secretary* may find necessary.

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TITLE VII—ADMINISTRATION

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DUTIES OF SECRETARY

SEC. 702. The Secretary of [Health, Education, and Welfare] *Health and Human Services* shall perform the duties imposed upon him by this Act and shall also have the duty of studying and making recommendations as to the most effective methods of providing economic security through social insurance, and as to legislation and matters of administrative policy concerning old-age pensions, unemployment compensation, accident compensation, and related subjects.

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REPORTS

SEC. 704. The Secretary shall make a full report to Congress, within one hundred and twenty days after the beginning of each regular session, of the administration of the functions with which he is charged under this Act. *Each such report shall contain a comprehensive description of the current status of the disability insurance program under title II (including, in the case of the reports made in 1984, 1985, and 1986, any advice and recommendations provided to the Secretary by the Advisory Council on Medical Aspects of Disability, with respect to disability standards, policies, and procedures, during the preceding year).* In addition to the number of copies of such report authorized by other law to be printed, there is hereby authorized to be printed not more than five thousand copies of such report for use by the Secretary for distribution to Members of Congress and to State and other public or private agencies or organizations participating in or concerned with the social security program.

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ADVISORY COUNCIL ON SOCIAL SECURITY

SEC. 706. (a) * * *

* * * * * * *

(c)(1) Any Council appointed hereunder is authorized to engage such technical assistance, including actuarial services, as may be required to carry out its functions, and the Secretary shall, in addition, make available to such Council such secretarial, clerical, and other assistance and such actuarial and other pertinent data prepared by the Department of [Health, Education, and Welfare] *Health and Human Services* as it may require to carry out such functions.

* * * * * * *

TITLE IX—MISCELLANEOUS PROVISIONS RELATING TO EMPLOYMENT SECURITY

EMPLOYMENT SECURITY ADMINISTRATION ACCOUNT

ESTABLISHMENT OF ACCOUNT

SECTION 901. (a) * * *

[THE INDENTATIONS OF THE FOLLOWING PARAGRAPHS (1) THROUGH (4) ARE REALIGNED BY THE BILL]

* * * * * * *

ADMINISTRATIVE EXPENDITURES

(c)(1) There are hereby authorized to be made available for expenditure out of the employment security administration account for the fiscal year ending June 30, 1971, and for each fiscal year thereafter—

(A) such amounts (not in excess of the applicable limit provided by paragraph (3) and, with respect to clause (ii), not in excess of the limit provided by paragraph (4)) as the Congress may deem appropriate for the purpose of—

(i) assisting the States in the administration of their unemployment compensation laws as provided in title III (including administration pursuant to agreements under any Federal unemployment compensation law),

(ii) the establishment and maintenance of systems of public employment offices in accordance with the Act of June 6, 1933, as amended (20 U.S.C., sec. 49–49n), and (iii) carrying into effect section 2003 of title 38 of the United States Code;

(B) such amounts (not in excess of the limit provided by paragraph (4) with respect to clause (iii)) as the Congress may deem appropriate for the necessary expenses of the Department of Labor for the performance of its functions under—

(i) this title and titles III and XII of this Act,

(ii) the Federal Unemployment Tax Act,

(iii) the provisions of the Act of June 6, 1933, as amended,

(iv) chapter 41 (except section 2003) of title 38 of the United States Code, and

(v) any Federal unemployment compensation law.

The term "necessary expenses" as used in this subparagraph (B) shall include the expense of reimbursing a State for salaries and other expenses of employees of such State temporarily assigned or detailed to duty with the Department of Labor and of paying such employees for travel expenses, transportation of household goods, and per diem in lieu of subsistence while away from their regular duty stations in the State, at rates authorized by law for civilian employees of the Federal Government.

(2) The Secretary of the Treasury is directed to pay from the employment security administration account into the Treasury as miscellaneous receipts the amount estimated by him which will be expended during a three-month period by the Treasury Department for the performance of its functions under—

(A) this title and titles III and XII of this Act, including the expenses of banks for servicing unemployment benefit payment and clearing accounts which are offset by the maintenance of balances of Treasury funds with such banks,

(B) the Federal Unemployment Tax Act, and

(C) any Federal unemployment compensation law with respect to which responsibility for administration is vested in the Secretary of Labor.

If it subsequently appears that the estimates under this paragraph in any particular period were too high or too low, appropriate adjustments shall be made by the Secretary of the Treasury in future payments.

(3)(A) For purposes of paragraph (1)(A), the limitation on the amount authorized to be made available for any fiscal year after June 30, 1970, is, except as provided in subparagraph (B) and in the second sentence of section 901(f)(3)(A), an amount equal to 95 percent of the amount estimated and set forth in the budget of the United States Government for such fiscal year as the amount by which the net receipts during such year under the Federal Unemployment Tax Act will exceed the amount transferred under section 905(b) during such year to the extended unemployment compensation account.

(B) The limitation established by subparagraph (A) is increased by any unexpended amount retained in the employment security administration account in accordance with section 901(f)(2)(B).

(C) Each estimate of net receipts under this paragraph shall be based upon (i) a tax rate of 0.5 percent in the case of any calendar year for which the rate of tax under section 3301 of the Federal Unemployment Tax Act is 3.2 percent, and (ii) a tax rate of 0.8 percent in the case of any calendar year for which the rate of tax under such section is 3.5 percent.

(4) For purposes of paragraphs (1)(A)(ii) and (1)(B)(iii) the amount authorized to be made available out of the employment security administration account for any fiscal year after June 30, 1972, shall reflect the proportion of the total cost of administering the system of public employment offices in accordance with the Act of June 6, 1933, as amended, and of the necessary expenses of the Department of Labor for the performance of its functions under the provisions of such Act, as the President determines is an appropriate charge to the employment security administration account, and reflects in his annual budget for such year. The President's determination, after consultation with the Secretary, shall take into account such factors as the relationship between employment subject to State laws and the total labor force in the United States, the number of claimants and the number of job applicants, and such other factors as he finds relevant.

* * * * * * *

Determination of Excess and Amount To Be Retained in Employment Security Administration Account

(f)(1) The Secretary of the Treasury shall determine as of the close of each fiscal year (beginning with the fiscal year ending June 30, 1961) the excess in the employment security administration account.

(2)(A) Except as provided in subparagraph (B), the excess in the employment security administration account as of the close of any fiscal year is the amount by which the net balance in such account as of such time (after the application of section 902(b) and section 901(f)(3)(C)) exceeds the net balance in the employment security administration account as of the beginning of that fiscal year (including the fiscal year for which the excess is being computed) for which the net balance was higher than as of the beginning of any other such fiscal year.

(B) With respect to the fiscal years ending June 30, 1970, June 30, 1971, and June 30, 1972, the balance in the employment security administration account at the close of each such fiscal year shall not be considered excess but shall be retained in the account for use as provided in paragraph (1) of subsection (c).

[THE INDENTATION OF THE FOLLOWING PARAGRAPH(S) IS REALIGNED BY THE BILL TO CONFORM TO THE PRECEDING PARAGRAPHS]

(3)(A) The excess determined as provided in paragraph (2) as of the close of any fiscal year after June 30, 1972, shall be retained (as of the beginning of the succeeding fiscal year) in the employment security administration account until the amount in such account is equal to 40 percent of the amount of the total appropriation by the Congress out of the employment security administration account for the fiscal year for which the excess is determined. Three-eighths of the amount in the employment security administration account as of the beginning of any fiscal year after June 30, 1972, or $150 million, whichever is the lesser, is authorized to be made available for such fiscal year pursuant to subsection (c)(1) for additional costs of administration due to an increase in the rate of insured unemployment for a calendar quarter of at least 15 percent over the rate of insured unemployment for the corresponding calendar quarter in the immediately preceding year.

(B) If the entire amount of the excess determined as provided in paragraph (2) as of the close of any fiscal year after June 30, 1972, is not retained in the employment security administration account, there shall be transferred (as of the beginning of the succeeding fiscal year) to the extended unemployment compensation account the balance of such excess or so much thereof as is required to increase the amount in the extended unemployment compensation account to the limit provided in section 905(b)(2).

(C) If as of the close of any fiscal year after June 30, 1972, the amount in the extended unemployment compensation account exceeds the limit provided in section 905(b)(2), such excess shall be transferred to the employment security administration account as of the close of such fiscal year.

* * * * * * *

UNEMPLOYMENT TRUST FUND

Establishment, etc.

SEC. 904. (a) There is hereby established in the Treasury of the United States a trust fund to be known as the "Unemployment Trust Fund", hereinafter in this title called the "Fund". The Secretary of the Treasury is authorized and directed to receive and hold in the Fund all moneys deposited therein by a State agency from a State unemployment fund, or by the Railroad Retirement Board to the credit of the railroad unemployment insurance account or the railroad unemployment insurance administration fund, or otherwise deposited in or credited to the Fund or any account therein. Such deposit may be made directly with the Secretary of the Treasury, with any depositary designated by him for such purpose, or with any Federal Reserve Bank.

Investments

(b) It shall be the duty of the Secretary of the Treasury to invest such portion of the Fund as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original issue at the issue price, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under [the Second Liberty Bond Act, as amended] *chapter 31 of title 31, United States Code,* are hereby extended to authorize the issuance at par of special obligations exclusively to the Fund. Such special obligations shall bear interest at a rate equal to the average rate of interest, computed as of the end of the calendar month next preceding the date of such issue, borne by all interest-bearing obligations of the United States then forming part of the public debt; except that where such average rate is not a multiple of one-eighth of 1 per centum, the rate of interest of such special obligations shall be the multiple of one-eighth of 1 per centum next lower than such average rate. Obligations other than such special obligations may be acquired for the Fund only on such terms as to provide an investment yield not less than the yield which would be required in the case of special obligations if issued to the Fund upon the date of such acquisition. Advances made to the Federal unemployment account pursuant to section 1203 shall not be invested.

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FEDERAL ADVISORY COUNCIL

Sec. 908. (a)* * *

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(d) Members of the Council shall, while serving on business of the Council, be entitled to receive compensation at rates fixed by the Secretary, but not exceeding $100 per day, including travel time; and while so serving away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by 5 U.S.C. 5703 [(b)] for persons in government service employed intermittently.

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TITLE XI—GENERAL PROVISIONS AND PROFESSIONAL STANDARDS REVIEW

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DEFINITIONS

Sec. 1101. (a) When used in this Act—

(1)* * *

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(6) The term "Secretary", except when the context otherwise requires, means the Secretary of [Health, Education, and Welfare] *Health and Human Services*.

* * * * * * *

RULES AND REGULATIONS

Sec. 1102. The Secretary of the Treasury, the Secretary of Labor, and the Secretary of [Health, Education, and Welfare] *Health and Human Services*, respectively, shall make and publish such rules and regulations, not inconsistent with this Act, as may be necessary to the efficient administration of the functions with which each is charged under this Act.

* * * * * * *

DISCLOSURE OF INFORMATION IN POSSESSION OF DEPARTMENT

Sec. 1106. (a) No disclosure of any return or portion of a return (including information returns and other written statements) filed with the Commissioner of Internal Revenue under title VIII of the Social Security Act or under subchapter E of chapter 1 or subchapter A of chapter 9 of the Internal Revenue Code, or under regulations made under authority thereof, which has been transmitted to the Secretary of [Health, Education, and Welfare] *Health and Human Services*, by the Commissioner of Internal Revenue, or of any file, record, report, or other paper, or any information, obtained at any time by the Secretary or by any officer or employee of the Department of [Health, Education, and Welfare] *Health and Human Services* in the course of discharging the duties of the Secretary under this Act, and no disclosure of any such file, record, report, or other paper, or information, obtained at any time by any person from the Secretary or from any officer or employee of the Department of [Health, Education, and Welfare] *Health and Human Services*, shall be made except as the Secretary may be regulations prescribe and except as otherwise provided by Federal law. Any person who shall violate any provision of this section shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not exceeding $1,000, or by imprisonment not exceeding one year, or both.

(b) Requests for information, disclosure of which is authorized by regulations prescribed pursuant to subsection (a) of this section, and requests for services, may, subject to such limitations as may be prescribed by the Secretary to avoid undue interference with his functions under this Act, be complied with if the agency, person, or organization making the request agrees to pay for the information or services requested in such amount, if any (not exceeding the cost of furnishing the information or services), as may be determined by the Secretary. Payments for information or services furnished pursuant to this section shall be made in advance or by way or reimbursement, as may be requested by the Secretary, and shall be deposited in the Treasury as a special deposit to be used to reimburse the appropriations (including authorizations to make expenditures from the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Fund, and the Federal Supplementary Medical Insurance Trust Fund) for the unit or units of the Department of [Health, Education, and Welfare] *Health and Human Services* which furnished the information or services. Notwithstanding the preceding provisions of this subsection, requests for information made pursuant to the provisions of part D of title IV of this Act for the purpose of using Federal records for locating parents shall be complied with and the cost incurred in providing such information shall be paid for as provided in such part D of title IV.

* * * * * * *

PENALTY FOR FRAUD

SEC. 1107. (a) Whoever, with the intent to defraud any person, shall make or cause to be made any false representation concerning the requirements of this Act[, subchapter E of chapter 1 or subchapter A, C, or E of chapter 9 of the Internal Revenue Code of 1939,] or of any rules or regulations issued thereunder, knowing such representations to be false, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding $1,000, or by imprisonment not exceeding one year, or both.

(b) Whoever, with the intent to elicit information as to the date of birth, employment, wages, or benefits of any individual (1) falsely represents to the Secretary of [Health, Education, and Welfare] *Health and Human Services* that he *or she* is such individual, or the wife, husband, widow, widower, [former wife divorced,] *divorced wife, divorced husband, surviving divorced wife, surviving divorced husband, surviving divorced mother, surviving divorced father,* child, or parent of such individual, or the duly authorized agent of such individual, or of the wife, husband, widow, widower, [former wife divorced,] *divorced wife, divorced husband, surviving divorced wife, surviving divorced husband, surviving divorced mother, surviving divorced father,* child, or parent of such individual, or (2) falsely represents to any person that he *or she* is an employee or agent of the United States, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding $1,000, or by imprisonment not exceeding one year, or both.

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APPOINTMENT OF ADVISORY COUNCIL AND OTHER ADVISORY GROUPS

SEC. 1114. (a) * * *

* * * * * * *

(c) The Council is authorized to engage such technical assistance as may be required to carry out its functions, and the Secretary shall, in addition, make available to the Council such secretarial, clerical, and other assistance and such pertinent data prepared by the Department of [Health, Education, and Welfare] *Health and Human Services* as it may require to carry out such functions.

* * * * * * *

(h)(1) Any member of the Council or any advisory committee appointed under this Act, who is not a regular full-time employee of the United States, is hereby exempted, with respect to such appointment, from the operation of [sections 281, 283, and 1914 of title 18 of the United States Code, and section 190 of the Revised Statutes (5 U.S.C. 99)] *sections 203, 205, and 209 of title 18, United States Code*, except as otherwise specified in paragraph (2) of this subsection.

(2) The exemption granted by paragraph (1) shall not extend—

(A) to the receipt or payment of salary in connection with the appointee's Government service from any source other than the employer of the appointee at the time of his appointment, or

(B) during the period of such appointment, to the prosecution or participation in the production, by any person so appointed, of any claim against the Government involving any matter with which such person, during such period, is or was directly connected by reason of such appointment.

DEMONSTRATION PROJECTS

SEC. 1115. (a) In the case of any experimental, pilot, or demonstration project which, in the judgment of the Secretary, is likely to assist in promoting the objectives of title I, [VI,] X, XIV, XVI, or XIX, or part A of title IV, in a State or States—

(1) the Secretary may waive compliance with any of the requirements of section 2, 402, [602,] 1002, 1402, 1602, or 1902, as the case may be, to the extent and for the period he finds necessary to enable such State or States to carry out such project, and

(2) costs of such project which would not otherwise be included as expenditures under section 3, 403, [603,] 1003, 1403, 1603, or 1903, as the case may be, and which are not included as part of the costs of projects under section 1110, shall, to the extent and for the period prescribed by the Secretary, be regarded as expenditures under the State plan or plans approved under such title, or for administration of such State plan or plans, as may be appropriate.

In addition, not to exceed $4,000,000 of the aggregate amount appropriated for payments to States under such titles for any fiscal year beginning after June 30, 1967, shall be available, under such terms and conditions as the Secretary may establish, for payments to States to cover so much of the cost of such projects as is not covered by payments under such titles and is not included as part of the cost of projects for purposes of section 1110.

* * * * * * *

ADMINISTRATIVE AND JUDICIAL REVIEW OF CERTAIN ADMINISTRATIVE DETERMINATIONS

SEC. 1116. (a)(1) Whenever a State plan is submitted to the Secretary by a State for approval under title I, [VI,] X, XIV, XVI, or XIX, or part A of title IV, he shall not later than 90 days after the date the plan is submitted to him, make a determination as to whether it conforms to the requirements for approval under such title. The 90-day period provided herein may be extended by written agreement of the Secretary and the affected State.

(2) Any State dissatisfied with a determination of the Secretary under paragraph (1) with respect to any plan may, within 60 days after it has been notified of such determination, file a petition with the Secretary for reconsideration of the issue of whether such plan conforms to the requirements for approval under such title. Within 30 days after receipt of such a petition, the Secretary shall notify the State of the time and place at which a hearing will be held for the purpose of reconsidering such issue. Such hearing shall be held not less than 20 days nor more than 60 days after the date notice of such hearing is furnished to such State, unless the Secretary and such State agree in writing to holding the hearing at another time. The Secretary shall affirm, modify, or reverse his original determination within 60 days of the conclusion of the hearing.

(3) Any State which is dissatisfied with a final determination made by the Secretary on such a reconsideration or a final determination of the Secretary under section 4, 404, [604,] 1004, 1404, 1604, or 1904 may, within 60 days after it has been notified of such determination, file with the United States court of appeals for the circuit in which such State is located a petition for review of such determination. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which he based his determination as provided in section 2112 of title 28, United States Code.

* * * * * * *

(b) For the purposes of subsection (a), any amendment of a State plan approved under title I, [VI,] X, XIV, XVI, XIX or XX, or part a of title IV, may, at the option of the State, be treated as the submission of a new State plan.

(c) Action pursuant to an initial determination of the Secretary described in subsection (a) shall not be stayed pending reconsideration, but in the event that the Secretary subsequently determines that his initial determination was incorrect he shall certify restitution forthwith in a lump sum of any funds incorrectly withheld or otherwise denied.

(d) Whenever the Secretary determines that any item or class of items on account of which Federal financial participation is claimed under title I, [VI,] X, XIV, [XVI, or XIX, or part A] *XVI, or XIX, or part A* of title IV, shall be disallowed for such participation, the State shall be entitled to and upon request shall receive a reconsideration of the disallowance.

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APPOINTMENT OF THE ADMINISTRATOR OF THE HEALTH CARE FINANCING ADMINISTRATION

SEC. 1117. The Administrator of the Health Care Financing Administation shall be appointed by the President by and with the advice and consent of the Senate.

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APPROVAL OF CERTAIN PROJECTS

SEC. 1120. No payment shall be made under this Act with respect to any experimental, pilot, demonstration, or other project all or any part of which is wholly financed with Federal funds made available under this Act (without any State, local, or other non-Federal financial participation) unless such project shall have been personally approved by the Secretary or Under Secretary of [Health, Education, and Welfare] *Health and Human Services.*

* * * * * * *

LIMITATION ON FEDERAL PARTICIPTION FOR CAPITAL EXPENDITURES

SEC. 1122. (a) * * *

(b) The Secretary, after consultation with the Governor (or other chief executive officer) and with appropriate local public officials, shall make an agreement with any State which is able and willing to do so under which a designated planning agency (which shall be an agency described in clause (ii) of subsection (d)(1)(B) that has a governing body or advisory board at least half of whose members represent consumer interests) will—

(1) make, and submit to the Secretary together with such supporting materials as he may find necessary, findings and recommendations with respect to capital expenditures proposed by or on behalf of any health care facility in such State within the field of its responsibilities[.],

(2) receive from other agencies described in clause (ii) of subsection (d)(1)(B), and submit to the Secretary together with such supporting material as he may find necessary, the findings and recommendations of such other agencies with respect to capital expenditures proposed by or on behalf of health care facilities in such State within the fields of their respective responsibilities, and

(3) establish and maintain procedures pursuant to which a person proposing any such capital expenditures may appeal a recommendation by the designated agency and will be granted an opportunity for a fair hearing by such agency or person other than the designated agency as the Governor (or other chief executive officer) may designate to hold such hearings,

whenever and to the extent that the findings of such designated agency or any such other agency indicate that any such expenditure is not consistent with the standards, criteria, or plans developed pursuant to the Public Health Service Act [(or the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963)] to meet the need for adequate health care facilities in the area covered by the plan or plans so developed.

* * * * * * *

(i)(1) The Secretary shall establish a national advisory council, or designate an appropriate existing national advisory council, to advise and assist him in the preparation of general regulations to carry out the purposes of this section and on policy matters arising in the administration of this section, including the coordination of activities under this section with those under other parts of this Act or under other Federal or federally assisted health programs.

(2) The Secretary shall make appropriate provision for consultation between and coordination of the work of the advisory council established or designated under paragraph (1) and the Federal Hospital Council, the National Advisory Health Council, the Health Insurance Benefits Advisory Council, and other appropriate national advisory councils with respect to matters bearing on the purposes and administration of this section and the coordination of activities under this section with related Federal health programs.

(3) If an advisory council is established by the Secretary under paragraph (1), it shall be composed of members who are not otherwise in the regular full-time employ of the United States, and who shall be appointed by the Secretary without regard to the civil service laws from among leaders in the fields of the fundamental sciences, the medical sciences, and the organization, delivery, and financing of health care, and persons who are State or local officials or are active in community affairs or public or civic affairs or who are representative of minority groups. Members of such advisory council, while attending meetings of the council or otherwise serving on business of the council, shall be entitled to receive compensation at rates fixed by the Secretary, but not exceeding the maximum rate specified at the time of such service for grade GS–18 in section 5332 of title 5, United States Code, including traveltime, and while away from their homes or regular places of business they may also be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703[(b)] of such title 5 for persons in the Government service employed intermittently.

* * * * * * *

DISCLOSURE BY INSTITUTIONS, ORGANIZATIONS, AND AGENCIES OF OWNERS AND CERTAIN OTHER INDIVIDUALS WHO HAVE BEEN CONVICTED OF CERTAIN OFFENSES

SEC. 1126. (a) As a condition of participation in or certification or recertification under the programs established by titles XVIII, and XIX, any hospital, nursing facility, or other institution, organization, or agency shall be required to disclose to the Secretary or to the appropriate State agency the name of any person who—

(1) has a direct or indirect ownership or control interest of 5 percent or more in such institution, organization, or agency or is an officer, director, agent, or managing employee (as defined in subsection (b)) of such institution, organization, or agency, and

(2) has been convicted (on or after the date of the enactment of this section, or within such period prior to that date as the Secretary shall specify in regulations) of a criminal offense related to the involvement of such person in any of such programs.

The Secretary or the appropriate State agency shall promptly notify the Inspector General in the Department of [Health, Education, and Welfare] *Health and Human Services* of the receipt from any institution, organization, or agency of any application or request for such participation, certification, or recertification which discloses the name of any such person, and shall notify the Inspector General of the action taken with respect to such application or request.

* * * * * * *

CIVIL MONETARY PENALTIES

SEC. 1128A. (a) * * *

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(g) Whenever the Secretary's determination to impose a penalty or assessment under subsection (a) becomes final, he shall notify the appropriate State or local medical or professional organization, and the appropriate [Professional Standards Review Organization,] *utilization and quality control peer review organization,* and the appropriate State or local licensing agency or organization (including the agency specified in section 1864(a) and 1902(a)(33)) that such a penalty or assessment has become final and the reasons therefor.

* * * * * * *

COORDINATED AUDITS

SEC. 1129. (a) If an entity provides services reimbursable on a cost-related basis under title XIX, as well as services reimbursable on such a basis under title XVIII, the Secretary shall require, as a condition for payment to any State under title XIX with respect to administrative costs incurred in the performance of audits of the books, accounts, and records of that entity, that these audits be coordinated through common audit procedures with audits performed with respect to the entity for purposes of title XVIII. The Secretary shall specify by regulation such methods as he finds feasible and equitable for the apportionment of the cost of coordinated audits between the program established under title XIX and the program established under title XVIII. Where the Secretary finds that a State has declined to participate in such a common audit with respect to title XIX, he shall reduce the payments otherwise due such State under such title by an amount which he estimates to be in excess of the amount that would have been apportioned to the State under the title (for the expenses of the [Sate] *State* incurred in the common audit) if it had participated in the common audit.

* * * * * * *

NOTIFICATION OF SOCIAL SECURITY CLAIMANT WITH RESPECT TO DEFERRED VESTED BENEFITS

SEC. 1131. (a) Whenever—

(1) the Secretary makes a finding of fact and a decision as to—

(A) the entitlement of any individual to monthly benefits under section 202, 223, or 228,

(B) the entitlement of any individual to a lump-sum death payment payable under section 202(i) on account of the death of any person to whom such individual is related by blood, marriage, or adoption, or

(C) the entitlement under section 226 of any individual to hospital insurnace benefits under part A of title XVIII, or

(2) the Secretary is requested to do so—

(A) by any individual with respect to whom the Secretary holds information obtained under section 6057 of the Internal Revenue Code of 1954, or

(B) in the case of the death of the individual referred to in subparagraph (A), by the individual who would be entitled to payment under section 204(d) of this Act[.],

[THE INDENTATION OF THE MATTER FOLLOWING PARAGRAPH (2)(B) IS REALIGNED BY THE BILL]

he shall transmit to the individual referred to in paragraph (1) or the individual making the request under paragraph (2) any information, as reported by the employer, regarding any deferred vested benefit transmitted to the Secretary pursuant to such section 6057 with respect to the individual referred to in paragraph (1) or (2)(A) or the person on whose wages and self-employment income entitlement (or claim of entitlement) is based.

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PART B—PEER REVIEW OF THE UTILIZATION AND QUALITY OF HEALTH CARE SERVICES

* * * * * * *

CONTRACTS WITH UTILIZATION AND QUALITY CONTROL PEER REVIEW ORGINIZATIONS

SEC. 1153. (a) * * *

(b)(1) * * *

* * * * * * *

[(3) The Secretary] *(3)(A) Except as provided in subparagraph (B), the Secretary,* shall not enter into a contract under this part with any entity which is, or is affiliated with (through management, ownership, or common control), a health care facility, or association of such facilities, within the area served by such entity or which would be served by such entity if it entered into a contract with the Secretary under this part.

(B) In the case of a utilization and quality control peer review organization with a governing board composed of—

(i) not more than 15 members, the Secretary may enter into a contract under this part with the organization if not more than one of the members of its governing board is a member of a governing board, officer, or managing employee of a health care facility, or

(ii) more than 15 members, the Secretary may enter into a contract under this part with the organization if not more than two of the members of its governing board are members of a governing board, officer, or managing employee of a health care facility.

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[TITLE XIII—RECONVERSION UNEMPLOYMENT BENEFITS FOR SEAMEN

[TABLE OF CONTENTS OF TITLE

[Sec. 1301. 412
[Sec. 1302. Definitions 412
[Sec. 1303. Compensation for seamen 412
[Sec. 1304. Administration 414
[Sec. 1305. Payments to States 414
[Sec. 1306. Penalties 415

[Sec. 1301. This title shall be administered by the Secretary of Labor.

[DEFINITIONS

Sec. 1302. When used in this title—

[(a) The term "reconversion period" means the period (1) beginning with the fifth Sunday after the date of the enactment of this title, and (2) ending June 30, 1950.

[(b) The term "compensation" means cash benefits payable to individuals with respect to their unemployment (including any portion thereof payable with respect to dependents).

[(c) The term "Federal maritime service" means service performed prior to July 1, 1949, which is determined to be employment pursuant to section 209(o).

[(d) The term "Federal maritime wages" means remuneration determined pursuant to section 209(o) to be remuneration for service referred to in section 209(o)(1), which was performed prior to July 1, 1949.

[COMPENSATION FOR SEAMEN

[Sec. 1303. (a) The Secretary of Labor is authorized on behalf of the United States to enter into an agreement with any State, or with the unemployment compensation agency of such State, under which such State agency (1) will make, as agent of the United States, payments of compensation, on the basis provided in subsection (b), to individuals who have performed Federal maritime service, and (2) will otherwise cooperate with the Secretary of Labor and with other State unemployment compensation agencies in making payments of compensation authorized by this title.

[(b) Any such agreement shall provide that compensation will be paid to such individuals, with respect to unemployment occurring in the reconversion period, in the same amounts, on the same terms, and subject to the same conditions as the compensation which would be payable to such individuals under the State unemployment compensation law if such individuals' Federal maritime service and Federal maritime wages has (subject to regulations of the Secretary of Labor concerning the allocation of such service and wages among the several States) been included as employment and wages under such law; except that the compensation to which an individual is entitled under such an agreement for any week shall be reduced by 15 per centum of the amount of any annuity, or retirement pay which such individual is entitled to receive, under any law of the United States relating to the retirement of officers or employees of the United States, for the month in which such week begins, unless a deduction from such compensation on account of such annuity or retirement pay is otherwise provided for by the applicable State law.

[(c) If in the case of any State an agreement is not entered into under this section or the unemployment compensation agency of such State fails to make payments in accordance with such agreement, the Secretary of Labor, in accordance with regulations prescribed by him, shall make payments of compensation to individuals who file a claim for compensation which is payable under such agreement, or would be payable if such agreement were entered into, on a basis which will provide that they will be paid compensation in the same amounts, on substantially the same terms, and subject to substantially the same conditions as though such agreement had been entered into and such agency made such payments. Final determinations by the Secretary of Labor of entitlement to such payments shall be subject to review by the courts in the same manner and to the same extent as is provided in Title II with respect to decisions by the Administrator, under such title.

[(d) Operators of vessels who are or were general agents of the War Shipping Administration or of the United States Maritime Commission shall furnish to individuals who have been in Federal maritime service, to the apropriate State agency, and to the Secretary of Labor such information with respect to wages and salaries as the Secretary of Labor may determine to be practicable and necessary to carry out the purposes of this title.

[(e) Pursuant to regulations prescribed by the Secretary of Labor, he, and any State agency making payments of compensation pursuant to an agreement under this section, may—

[(1) to the extent that the Secretary of Labor finds that it is not feasible for Federal agencies or operators of vessels to furnish information necessary to permit exact and reasonably prompt determinations of the wages or salaries of individuals who have performed Federal maritime service, determine the amount of and pay compensation to any individual under this section, or an agreement thereunder, as if the wages or salary paid such individual for each week of such service were in an amount equal to his average weekly wages or salary for the last pay period of such serive occurring prior to the time he files his initial claim for compensation; and

[(2) to the extent that information is inadequate to assure the prompt payment of compensation authorized by this section (either on the basis of the exact wages or salaries of the individuals concerned or on the basis prescribed in clause (1) of this subsection), accept certification under oath by individuals of facts relating to their Federal maritime service and to wages and salaries paid them with respect to such service.

[ADMINISTRATION

[SEC. 1304 (a) Determinations of entitlement to payments of compensation by a State unemployment compensation agency under an agreement under this title shall be subject to review in the same manner and to the same extent as determinations under the State unemployment compensation law, and only in such manner and to such extent.

[(b) For the purpose of payments made to a State under Title III administration by the unemployment compensation agency of such State pursuant to an agreement under this title shall be deemed to be a part of the administration of the State unemployment compensation law.

[(c) The State unemployment compensation agency of each State shall furnish to the Secretary of Labor such information as the Secretary of Labor may find necessary in carrying out the provisions of this title, and such information shall be deemed reports required by the Secretary of Labor for the purposes of section 303(a)(6).

[PAYMENTS TO STATES

[SEC. 1305. (a) Each State shall be entitled to be paid by the United States an amount equal to the additional cost to the State of payments of compensation made under and in accordance with an agreement under this title, which would not have been incurred by the State but for the agreement.

[(b) In making payments pursuant to subsection (a) of this section, there shall be paid to the State, either in advance or by way of reimbursement, as may be determined by the Secretary of Labor, such sum as the Secretary of Labor estimates the State will be entitled to receive under this title for each calendar quarter; reduced or increased, as the case may be, by any sum by which the Secretary of Labor finds that his estimates for any prior calendar quarter were greater or less than the amounts which should have been paid to the State. The amount of such payments may be determined by such statistical, sampling, or other method as may be agreed upon by the Secretary of Labor and the State agency.

[(c) The Secretary of Labor shall from time to time certify to the Secretary of the Treasury for payment to each State the sums payable to such State under this section. The Secretary of the Treasury, prior to audit or settlement by the General Accounting Office, shall make payment, at the time or times fixed by the Secretary of Labor, in accordance with certification, from the funds for carrying out the prupose of this title. Notwithstanding any other provision of this title, no compensation shall be paid to any individual pursuant to this title with respect to unemployment occurring prior to the date when funds are made available for such payments.

[(b) All money paid to a State under this section shall be used solely for the purposes for which it is paid; and any money so paid which is not used for such purposes shall be returned to the Treasury upon termination of the agreement or termination of the reconversion period, whichever first occurs.

[(e) An agreement under this title may require any officer or employee of the State certifying payments or disbursing funds pursuant to the agreement, or otherwise participating in its performance, to give a surety bond to the United States in such amount as the Secretary of Labor may deem necessary, and may provide for the payment of the cost of such bond from appropriations for carrying out the purposes of this title.

[(f) No person by the Secretary of Labor, designated pursuant to an agreement under this title, as a certifying officer shall, in the absence of gross negligence or intent to defraud the United States, be liable with respect to the payment of any compensation certified by him under this title.

[(g) No disbursing office shall, in the absence of gross negligence or intent to defraud the United States, be liable with respect to any payment by him under this title if it was based upon a voucher signed by a certifying officer designated as provided in subsection (f).

[PENALTIES

[SEC. 1306. (a) Whoever, for the purpose of causing any compensation to be paid under this title or under an agreement thereunder where none is authorized to be so paid, shall make or cause to be made any false statement or representation as to any wages paid or received, or whoever makes or causes to be made any false statement of a material fact in any claim for any compensation authorized to be paid under this title or under an agreement thereunder, or whoever makes or causes to be made any false statement, representation, affidavit, or document in connection with such claim, shall, upon conviction thereof, be fined not more than $1,000 or imprisoned for not more than one year, or both.

[(b) Whoever shall obtain or receive any money, check or compensation under this title or an agreement thereunder, without being entitled thereto and with intent to defraud the United States, shall, upon conviction thereof, be fined not more than $1,000 or imprisoned for not more than one year, or both.

[(c) Whoever willfully fails or refuses to furnish information which the Secretary of Labor requires him to furnish pursuant to authority of section 1303(d), or willfully furnishes false information pursuant to a requirement of the Secretary of Labor under such subsection, shall, upon conviction thereof, be fined not more than $1,000 or imprisoned for not more than six months, or both.]

TITLE XVI—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

* * * * * * *

BASIC ELIGIBILITY FOR BENEFITS

Sec. 1602. Every aged, blind, or disabled individual who is determined under part A to be eligible on the basis of his income and resources shall, in accordance with and subject to the provisions of this title, be paid benefits by the Secretary of [Health, Education, and Welfare] *Health and Human Services.*

* * * * * * *

PART A—DETERMINATION OF BENEFITS

ELIGIBILITY FOR AND AMOUNT OF BENEFITS

Definition of Eligible Individual

Sec. 1611. (a)(1) * * *

* * * * * * *

Period for Determination of Benefits

(c)(1) An individual's eligibility for a benefit under this title for a month shall be determined on the basis of the individual's (and eligible spouse's, if any) income, resoures, and other relevant characteristics in such month, and, except as provided in paragraphs (2), (3), and (4), the amount of such benefit shall be determined for such month on the basis of income and other characteristics in the first or, if the Secretary.

(2) The amount of such benefit for the month in which an application for benefits becomes effective (or, if the Secretary so determines, for such month and the following month) and for any month immediately following a month of ineligibility for such benefits (or, if the Secretary so determines, for such month and the following month) shall—

(A) be determined on the basis of the income of the individual and the eligible spouse, if any, of such individual and other relevant circumstances in such month; and

(B) in the case of the month in which an application becomes effective or the first month following a period of ineligibility, if such application becomes effective, or eligibility is restored, after the first day of such month, bear the same ratio to the amount of the benefit which would have been payable to such individual if such application had become effective, or eligibility had been restored, on the first day of such month as the number of days in such month including and following the effective date of such application or restoration of eligibility bears to the total number of days in such month.

(3) For purposes of this subsection, an increase in the benefit amount payable under title II (over the amount payable in the preceding month, or, at the election of the Secretary, the second preceding month) to an individual receiving benefits under this title shall be included in the income used to determine the benefit under this title of such individual for any month which is—

(A) the first month in which the benefit amount payable to such individual under this title is increased pursuant to section 1617, or

(B) at the election of the Secretary, the month immediately following such month.

(4)(A) Notwithstanding paragraph (3), if the Secretary determines that reliable information is currently available with respect to the income and other circumstances of an individual for a month (including information with respect to a class of which such individual is a member and information with respect to scheduled cost-of-living adjustments under other benefit programs), the benefit amount of such individual under this title for such month may be determined on the basis of such information.

(B) The Secretary shall prescribe by regulation the circumstances in which information with respect to an event may be taken into account pursuant to subparagraph (A) in determining benefit amounts under this title.

* * * * * * *

Certain Individuals Deemed To Meet Resources Test

(g) In the case of any individual or any individual and his spouse (as the case may be) who—

(1) received aid or assistance for December 1973 under a plan of a State approved under title I, X, XIV, or XVI,

(2) has, since December 31, 1973, continuously resided in the State under the plan of which he or they received such aid or assistance for December 1973, and

(3) has, since December 31, 1973, continuously been (except for periods not in excess of six consecutive months) an eligible individual or eligible spouse with respect to whom supplemental security income benefits are payable,

the resources of such individual or such individual and his spouse (as the case may be) shall be deemed not to exceed the amount specified in sections 1611(a)(1)(B) and 1611(a)(2)(B) during any period that the resources of such individual [or individuals] *or such individual* and his spouse (as the case may be) does not exceed the maximum amount of resources specified in the State plan, as in effect for October 1972, under which he or they received such aid or assistance for December 1973.

* * * * * * *

INCOME

Meaning of Income

Sec. 1612. (a) For purposes of this title, income means both earned income and unearned income; and—

(1) * * *

* * * * * * *

Exclusions From Income

(b) In determining the income of an individual (and his eligible spouse) there shall be excluded—

(1) subject to limitations (as to amount or otherwise) prescribed by the Secretary, if such individual is a child who is, as determined by the Secretary, a student regularly attending a school, college, or university, or a course of vocational or technical training designed to prepare his for gainful employment, the earned income of such individual;

(2)(A) the first $240 per year (or proportionately smaller amounts for shorter periods) of income (whether earned or unearned) other than income which is paid on the basis of the need of the eligible individual;

THE INDENTATION OF THE FOLLOWING SUBPARAGRAPH (B) IS REALIGNED BY THE BILL TO CONFORM TO THE [PRECEDING SUBPARAGRAPH]

(B) monthly (or other periodic) payments received by any individual, under a program established prior to July 1, 1973, if such payments are made by the State of which the individual receiving such payments is a resident, and if eligiblity of any individual for such payments is not based on need and is based solely on attainment of age 65 and duration of residence in such State by such individual;

* * * * * * *

(9) if such individual is a child, one-third of any payment for his support received from an absent parent;

* * * * * * *

RESOURCES

Exclusions From Resources

SEC. 1613. (a) * * *

* * * * * * *

[DISPOSAL OF RESOURCES FOR LESS THAN FAIR MARKET VALUE]

Disposal of Resources for Less Than Fair Market Value

(c)(1) In determining the resources of an individual (and his eligible spouse, if any) there shall be included (but subject to the exclusions under subsection (a)) any resource (or interest therein) owned by such individual or eligible spouse within the preceding 24 months if such individual or eligible spouse gave away or sold such resource or interest at less than fair market value of such resource or interest for the purpose of establishing eligibility for benefits or assistance under this Act.

(2) Any transaction described in paragraph (1) shall be presumed to have been for the purpose of establishing eligibility for benefits or assistance under this Act unless such individual or eligible

spouse furnishes convincing evidence to establish that the transaction was exclusively for some other purpose.

(3) For purposes of paragraph (1) the value of such a resource or interest shall be the fair market value of such resource or interest at the time it was sold or given away, less the amount of compensation received for such resource or interest, if any.

MEANING OF TERMS

Aged, Blind, or Disabled Individual

SEC. 1614. (a)(1) * * *

* * * * * * *

(3)(A) An individual shall be considered to be disabled for purposes of this title if he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months (or, in the case of a child under the age of 18, if he suffers from any medically determinable physical or mental impairment of comparable severity).

(B) For purposes of subparagraph (A), an individual shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work. For purposes of the preceding sentence (with respect to any individual). "work which exists in the national economy" means work with exists in significant numbers either in the region where such individual lives or in several regions of the country.

(C) For purposes of this paragraph, a physical or mental impairment is an impairment that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.

(D) The Secretary shall by regulations prescribe the criteria for determining when services performed or earnings derived from services demonstrate an individual's ability to engage in substantial gainful activity. In determining whether an individual is able to engage in substantial gainful activity by reason of his earnings, where his disability is sufficiently severe to result in a functional limitation requiring assistance in order for him to work, there shall be excluded from such earnings an amount equal to the cost (to such individual) of any attendant care services, medical devices, equipment, prostheses, and similar items and services (not including routine drugs or routine medical services unless such drugs or services are necessary for the control of the disabling condition) which are necessary (as determined by the Secretary in regulations) for that purpose, whether or not such assistance is also needed to enable him to carry out his normal daily functions; except that the amounts to be excluded shall be subject to such reasonable limits as the Secretary may prescribe,[44] Notwithstanding the provisions of subparagraph (B), an individual whose services or earnings meet such criteria, except for purposes of subparagraph (F) or paragraph (4) shall be found not to be disabled.

[THE INDENTATION OF THE FOLLOWING SUBPARAGRAPH (E) IS REALIGNED BY THE BILL TO CONFORM TO THE PRECEDING SUBPARAGRAPHS]

(E) Notwithstanding the provisions of subparagraphs (A) through (D), an individual shall also be considered to be disabled for purposes of this title if he is permanently and totally disabled as defined under a State plan approved under title XIV or XVI as in effect for October 1972 and received aid under such plan (on the basis of disability) for December 1973 (and for at least one month prior to July 1973), so long as he is continuously disabled as so defined.

* * * * * * *

(G) In determining whether an individual's physical or mental impairment or impairments are of such severity that he or she is unable to engage in substantial gainful activity, the Secretary shall consider the combined effect of all of the individual's impairments without regard to whether any such impairment, if considered separately, would be of such severity.

* * * * * * *

(5) A recipient of benefits based on disability under this title may be determined not to be entitled to such benefits on the basis of a finding that the physical or mental impairment on the basis of which such benefits are provided has ceased, does not exist, or is not disabling only if finding is supported by—

(A) substantial evidence demonstrating that there has been medical improvement in the individual's impairment or combination of impairments so that the individual now is able to engage in substantial gainful activity;

(B) substantial evidence (except in the case of an individual eligible to receive benefits under section 1619) which—

(i) consists of new medical evidence and a new assessment of the individual's residual functional capacity and demonstrates that, although the individual has not improved medically, he or she is nonetheless a beneficiary of advances in medical or vocational therapy or technology so that the individual is able to engage in substantial gainful activity, or

(ii) demonstrates that, although the individual has not improved medically, he or she has undergone vocational therapy so that he or she is now able to engage in substantial gainful activity; or

(C) substantial evidence which demonstrates that, as determined on the basis of new or improved diagnostic techniques or evaluations, the individual's impairment or combination of impairments is not as disabling as it was considered to be at the time of the most recent prior decision that he or she was under

a disability or continued to be under a disability, so that the individual now is able to engage in substantial gainful activity. Nothing in this paragraph shall be construed to require a determination that a recipient of benefits under this title based on disability is entitled to such benefits if evidence on the record at the time any prior determination of such entitlement to benefits was made, or new evidence which relates to that determination, shows that the prior determination was either clearly erroneous at the time it was made or was fraudulently obtained, or if the individual (unless he or she is eligible to receive benefits under section 1619) is engaged in substantial gainful activity. In any case in which there is no available medical evidence supporting a prior determination of disability, nothing in this subsection shall preclude the Secretary, in attempting to meet the requirements of the preceding provisions of this subsection, from securing additional medical reports necessary to reconstruct the evidence which supported such prior determination.

* * * * * * *

Determination of Marital Relationships

(d) In determining whether two individuals are husband and wife for purposes of this title, appropriate State law shall be applied; except that—

(1) if a man and [women] woman have been determined to be husband and wife under section 216 (h)(1) for purposes of title II they shall be considered (from and after the date of such determination or the date of their application for benefits under this title, whichever is later) to be husband and wife for purposes of this title, or

* * * * * * *

REHABILITATION SERVICES FOR BLIND AND DISABLED INDIVIDUALS

SEC. 1615. (a) In the case of any blind or disabled individual who—

(1) has not attained age 65, and

(2) is receiving benefits (or with respect to whom benefits are paid) under this title,

the Secretary shall make provision for referral of such individual to the appropriate State agency administering the State plan for vocational rehabilitation services approved under [the Vocational Rehabilitation Act], *title I of the Rehabilitation Act of 1973* or, in the case of any such individual who has not attained age 16, to the State agency administering the State program under title V, and (except for individuals who have not attained age 16 and except in such other cases as he may determine) for a review not less often than quarterly of such individual's blindness or disability and his need for and utilization of the services made available to him under such plan.

(c) Every individual age 16 or over with respect to whom the Secretary is required to make provision for referral under subsection (a) shall accept such services as are made available to him under the State plan for vocational and rehabilitation services approved under [the Vocational Rehabilitation Act] *title I of the Rehabilitation Act of 1973*; and no such individual shall be an eligible individual or eligible spouse for purposs of this title if he refuses without good cause to accept services for which he is referreed under subsection (a).

(d) The Secretary is authorized to reimburse to the State agency administering or supervising the administration of a State plan for vocational rehabilitation services approved under the [Vocational Rehabilitation Act] the costs incurred under such plan in the provision of rehabilitation services to individuals who are referred for such services pursuant to subsection (a) [if such services result in their performance of substantial gainful activity which lasts for a continuous period of nine months] *(1) in cases where the furnishing of such services results in the performance by such individuals of substantial gainful activity for continuous periods of nine months, (2) in cases where such individuals are determined to be no longer entitled to benefits under this title because the physical or mental impairments on which the benefits are based have ceased, do not exist, or are not disabling (and no reimbursement under this subsection shall be made for services furnished to any individual receiving such benefits for any period after the close of such individual's ninth consecutive month of substantial gainful activity or the close of the month with which his or her entitlement to such benefits ceases, whichever first occurs), and (3) in cases where such individuals, without good cause, refuse to accept vocational rehabilitation services or fail to cooperate in such a manner as to preclude their successful rehabilitation.* The determination of the amount of costs to be reimbursed under this subsection shall be made by the Commissioner of Social Security in accordance with criteria determined by him in the same manner as under section 222(d)(1).

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OPERATION OF STATE SUPPLEMENTATION PROGRAMS

SEC. 1618. (a)

[THE INDENTATION OF THE FOLLOWING SUBSECTION (D) IS REALIGNED BY THE BILL TO CONFORM TO THE PREDEDING SUBSECTIONS]

(*d*) The Secretary shall not find that a State has failed to meet the requirements imposed by paragraph (4) of subsection (a) with respect to the levels of its[,] supplementary payments for any portion of the period July 1, 1980, through June 30, 1981, if the State's expenditures for such payments in that twelve-month period were not less than its expenditures for such payments for the period July 1, 1976, through June 30, 1977 (or, if the State made no supplementary payments in the period July 1, 1976, through June 30, 1977, the expenditures for the first twelve-month period extending from July 1 through June 30 in which the State made such payments).

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BENEFITS FOR INDIVIDUALS WHO PERFORM SUBSTANTIAL GAINFUL ACTIVITY DESPITE SEVERE MEDICAL IMPAIRMENT

SEC. 1619. (a) Any individual who is an eligible individual (or eligible spouse) by reason of being under a disability and was eligible to receive benefits under section 1611(b) or under this section for the month preceding the month for which eligibility for benefits under this section is now being determined, and who would otherwise be denied benefits by reason of section 1611(e)(4) or ceases to be an eligible indiviudual (or eligible spouse) because his earnings have demonstrated a capacity to engage in substantial gainful activity, shall nevertheless qualify for a monthly benefit equal to an amount determined under section 1611(b)(1) (or, in the case of an individual who has an eligible spouse, under section 1611(b)(2)), and for purposes of title XIX of this Act shall be considered a disabled individual receiving supplemental security income benefits under this title, for so long as the Secretary determines that—

(1) such individual continues to have the disabling physical or mental impairment on the basis of which such individual was found to be under a disability, and continues to meet all non-disability-related requirements for eligibility for benefits under this title; and

(2) the income of such individual other than income excluded pursuant to section 1612(b), is not equal to or in excess of the amount which would cause him to be ineligible for payments under section 1611(b) (if he were otherwise eligible for such payments).

(b) For purposes of title XIX, any individual under age 65 who, for the month preceding the first month in the period to which this subsection applies, received—

(i) a payment of supplemental security income benefits under section 1611(b) on the basis of blindness or disability,

(ii) a supplementary payment under section 1616 of this Act or under section 212 of Public Law 93–66 on such basis,

(iii) a payment of monthly benefits under subsection (a), or

(iv) a supplementary payment under section 1616(c)(3),

shall be considered to be a blind or disabled individual receiving supplemental security income benefits for so long as the Secretary determines under regulations that—

(1) such individual continues to be blind or continues to have the disabling physical or mental impairment on the basis of which he was found to be under a disability and, except for his earnings, continues to meet all non-disability-related requirements for eligibility for benefits under this title;

(2) the income of such individual would not, except for his earnings, be equal to or in excess of the amount which would cause him to be ineligible for payments under section 1611(b) (if he were otherwise eligible for such payments);

(3) the termination of eligibility for benefits under title XIX or XX would seriously inhibit his ability to continue his employment; and

(4) such individual's earnings are not sufficient to allow him to provide for himself a reasonable equivalent of the benefits

under this title and titles XIX and XX which would be available to him in the absence of such earnings.

(c) The Secretary of Health and Human Services and the Secretary of Education shall jointly develop and disseminate information, and establish training programs for staff personnel, with respect to the potential availability of benefits and services for disabled individuals under the provisions of this section. The Secretary of Health and Human Services shall provide such information to individuals who are applicants for and recipients of benefits based on disability under this title and shall conduct such programs for the staffs of the District offices of the Social Security Administration. The Secretary of Education shall conduct such programs for the staffs of the State Vocational Rehabilitation agencies, and in cooperation with such agencies shall also provide such information to other appropriate individuals and to public and private organizations and agencies which are concerned with rehabilitation and social services or which represent the disabled.

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ATTRIBUTION OF SPONSOR'S INCOME AND RESOURCES TO ALIENS

SEC. 1621. (a) * * *

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(e) Any sponsor of an alien, and such alien, shall be jointly and [severably] *severally* liable for an amount equal to any overpayment made to such alien during the period of three years after such alien's entry into the United States, on account of such sponsor's failure to provide correct information under the provisions of this section, except where such sponsor was without fault, or where good cause for such failure existed. Any such overpayment which is not repaid to the Secretary or recovered in accordance with section 1631(b) shall be withheld from any subsequent payment to which such alien or such sponsor is entitled under any provision of this Act.

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PART B—PROCEDURAL AND GENERAL PROVISIONS

PAYMENTS AND PROCEDURES

Payment of Benefits

SEC. 1631. (a)(1) * * *

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(7)(A) In any case where—

(i) an individual is a recipient of benefits based on disability or blindness under this title,

(ii) the physical or mental impairment on the basis of which such benefits are payable is found to have ceased, not to have existed, or to no longer be disabling, and as a consequence such individual is determined not to be entitled to such benefits, and

(iii) a timely request for review or for a hearing is pending with respect to the determination that he is not so entitled,

such individual may elect (in such manner and form and within such time as the Secretary shall by regulations prescribe) to have the payment of such benefits continued for an additional period beginning with the first month beginning after the date of the enactment of this paragraph for which (under such determination) such benefits are no longer otherwise payable, and ending with the earlier of (I) the month preceding the month in which a decision is made after such a hearing, or (II) the month preceding the month in which no such request for review or a hearing is pending.

(B)(i) If an individual elects to have the payment of his benefits continued for an additional period under subparagraph (A), and the final decision of the Secretary affirms the determination that he is not entitled to such benefits, any benefits paid under this title pursuant to such election (for months in such additional period) shall be considered overpayments for all purposes of this title, except as otherwise provided in clause (ii).

(ii) If the Secretary determines that the individual's appeal of his termination of benefits was made in good faith, all of the benefits paid pursuant to such individual's election under subparagraph (A) shall be subject to waiver consideration under the provisions of subsection (b)(1).

(C) The provisions of subparagraphs (A) and (B) shall apply with respect to determinations (that individuals are not entitled to benefits) which are made on or after the date of the enactment of this paragraph, or prior to such date but only on the basis of a timely request for review or for a hearing.

Overpayments and Underpayments

(b)(1) Whenever the Secretary finds that more or less than the correct amount of benefits has been paid with respect to any individual, proper adjustment or recovery shall, subject to the succeeding provisions of this subsection, be made by appropriate adjustments in future payments to such individual or by recovery from or payment to such individual or his eligible spouse (or by recovery from the estate of either). The Secretary shall make such provision as he finds appropriate in the case of payment of more than the correct amount of benefits with respect to an individual with a view to avoiding penalizing such individual or his eligible spouse who was without fault in connection with the overpayment, if adjustment or recovery on account of such overpayment in such case would defeat the purposes of this title, or be against equity **[**or**]** *and* good conscience, or (because of the small amount involved) impede efficient or effective administration of this title.

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Procedures; Prohibitions of Assignments; Representation of Claimants

(d)(1) The provisions of section 207 and subsections (a), *(b)(2),* (d), **[**(e), and (f)**]** *and (e)* of section 205 shall apply with respect to this part to the same extent as they apply in the case of title II.

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ADMINISTRATION

SEC. 1633. (a) * * *

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(c) Section 234 shall apply with respect to decisions of United States courts of appeals involving interpretations of provisions of this title or of regulations prescribed under this title (and requiring action with respect to such provisions) in the same manner and to the same extent as it applies with respect to decisions involving interpretations of provisions of title II or of regulations prescribed thereunder (and requiring action with respect to such provisions).

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TITLE XVIII—HEALTH INSURANCE FOR THE AGED AND DISABLED

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PART A—HOSPITAL INSURANCE BENEFITS FOR THE AGED AND DISABLED

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CONDITIONS OF AND LIMITATIONS ON PAYMENT FOR SERVICES

Requirement of Requests and Certifications

SEC. 1814. (a) Except as provided in subsections (d) and (g) and in section 1876, payment for services furnished an individual may be made only to providers of services which are eligible therefor under section 1866 and only if—

(1) written request, signed by such individual, except in cases in which the Secretary finds it impracticable for the individual to do so, is filed for such payment in such form, in such manner, and by such person or persons as the Secretary may by regulation prescribe, no later than the close of the period of 3 calendar years following the year in which such services are furnished (deeming any services furnished in the last 3 calendar months of any calendar year to have been furnished in the succeeding calendar year) except that where the Secretary deems that efficient administration so requires, such period may be reduced to not less than 1 calendar year;

(2) a physician certifies (and recertifies, where such services are furnished over a period of time, in such cases, with such frequency, and accompanied by such supporting material, appropriate to the case involved, as may be provided by regulations, except that the first of such recertifications shall be required in each case of inpatient hospital services not later than the 20th day of such period) that—

(A) in the case of inpatient psychiatric hospital services, such services are or were required to be given on an inpatient basis, by or under the supervision of a physician, for the psychiatric treatment of an individual; and (i) such treatment can or could reasonably be expected to improve the condition for which such treatment is or was necessary or (ii) inpatient diagnostic study is or was medically required and such services are or were necessary for such purposes;

[(B) in the case of inpatient tuberculosis hospital services, such services are or were required to be given on an inpatient basis, by or under the supervision of a physician, for the treatment of an individual for tuberculosis; and such treatment can or could reasonably be expected to (i) improve the condition for which such treatment is or was necessary or (ii) render the condition noncommunicable;]

(C) in the case of post-hospital extended care services, such services are or were required to be given because the individual needs or needed on a daily basis skilled nursing care, (provided directly by or requiring the supervision of skilled nursing personnel) or other skilled rehabilitation services, which as a practicial matter can only be provided in a skilled nursing facility on an inpatient basis, for any of the conditions with respect to which he was receiving inpatient hospital services (or services which would constitute inpatient hospital services if the institution met the requirements of paragraph (6) and (9) of section 1861(e)) prior to transfer to the skilled nursing facility or for a condition requiring such extended care services which arose after such transfer and while he was still in the facility for treatment of the condition or conditions for which he was receiving such inpatient hospital services;

(D) in the case of home health services, such services are or were required because the individual is or was confined to his home (except when receiving items and services referred to in section 161(m)(7)) and skilled nursing care on an intermittent basis for physical or speech therapy or, in the case of an individual who has been furnished home health services based on such a need and who no longer has such a need for such care or therapy, continues or continued to need occupational therapy; a plan for furnishing such services to such individual has been established and is periodically reviewed by a physician; and such services are or were furnished while the individual was under the care of a physician; or

(E) in the case of inpatient hospital services in connection with the care, treatment, filling, removal, or replacement of teeth or structures directly supporting teeth, the inividual, because of his underlying medical condition and clinical status or because of the severity of the dental procedure, requires hospitalization in connection with the provision of such services;

(3) with respect to inpatient hospital services (other than inpatient psychiatric hospital services[and inpatient tuberculosis hospital services]) which are furnished over a period of time, a physician certifies that such services are required to be given on an inpatient basis or such individual's medical treatment, or that inpatient diagnostic study is medically required

and such services are necessary for such purpose, except that (A) such certification shall be furnished only in such cases, with such frequency, and accompanied by such supporting material, appropriate to the cases involved, as may be provided by regulations, and (B) the first such certification required in accordance with clause (A) shall be furnished no later than the 20th day of such period;

(4) in the case of inpatient psychiatric hospital services, the services are those which the records of the hospital indicate were furnished to the individual during periods when he was receiving (A) intensive treatment services, (B) admission and related services necessary for a diagnostic study, or (C) equivalent services;

[(5) in the case of inpatient tuberculosis hospital services, the services are those which the records of the hospital indicate were furnished to the individual during periods when he was receiving treatment which could reasonably be expected to (A) improve his condition or (B) render it noncommunicable;]

(6) with respect to inpatient hospital services furnished such individual after the 20th day of a continuous period of such services and with respect to post-hospital extended care services furnished after such day of a continuous period of such services as may be prescribed in or pursuant to regulations, there was not in effect, at the time of admission of such individual to the hospital or skilled nursing facility, as the case may be, a decision under section 1866(d) (based on a finding that utilization review of long-stay cases is not being made in such hospital or facility);

(7) with respect to inpatient hospital services or post-hospital extended care services furnished such individual during a continuous period, a finding has not been made (by the physician members of the committee or group, as described in section 1861(k)(4), including any finding made in the course of a sample or other review of admissions to the institution) pursuant to the system of utilization review that further inpatient hospital services or further post-hospital extended care services, as the case may be, are not medically necessary; except that, if such a finding has been made, payment may be made for such services furnished before the 4th day after the day on which the hospital or skilled nursing facility, as the case may be, received notice of such finding;

(8) in the case of hospice care provided an individual—

(A)(i) in the first 90-day period—

(I) the individual's attending physician (as defined in section 1861(dd)(3)(B)), and

(II) the medical director (or physician member of the interdisciplinary group described in section 1981(dd)(2)(B)) of the hospice program providing (or arranging for) the care,

each certify, not later than two days after hospice care is initiated, that the individual is terminally ill (as defined in section 1861(dd)(3)(A)), and

(ii) in a subsequent 90- or 30-day period, the medical director or physician described in clause (i)(II) recertifies at the beginning of the period that the individual is terminally ill;

(B) a written plan for providing hospice care with respect to such individual has been established (before such care is provided by, or under arrangements made by, that hospice program) and is periodically reviewed by the individual's attending physician and by the medical director (and the interdisciplinary group described in section 1861(dd)(2)(B)) of the hospice program; and

(C) such care is being or was provided pursuant to such plan of care.

To the extent provided by regulations, the certification and recertification requirements of paragraph (2) shall be deemed satisfied where, at a later date, a physician makes certification of the kind provided in subparagraph (A), [(B),] (C), (D), or (E) of paragraph (2) (whichever would have applied), but only where such certification is accompanied by such medical and other evidence as may be required by such regulations. With respect to the physician certification required by paragraph (2) for home health services furnished to any individual by a home health agency (other than an agency which is a governmental entity) and with respect to the establishment and review of a plan for such services, the Secretary shall prescribe regulations which shall become effective no later than July 1, 1981, and which prohibit a physician who has a significant ownership interest in, or a significant financial or [contractual] *contractual* relationship with, such home health agency from performing such certification and from establishing or reviewing such plan, *except that such prohibition shall not apply with respect to a home health agency which is a sole community home health agency (as determined by the Secretary). For purposes of the preceding sentence; service by a physician as an uncompensated officer or director of a home health agency shall not constitute having a significant ownership interest in, or a significant financial or contractual relationship with, such agency.*

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FEDERAL HOSPITAL INSURANCE TRUST FUND

SEC. 1817. (a) There is hereby created on the books of the Treasury of the United States a trust fund to be known as the "Federal Hospital Insurance Trust Fund" (hereinafter in this section referred to as the "Trust Fund"). The Trust Fund shall consist of such gifts and bequests as may be made as provided in section 201(i)(1), and such amounts as may be deposited in, or appropriated to, such fund as provided in this part. There are hereby appropriated to the Trust Fund for the fiscal year ending June 30, 1966, and for each fiscal year thereafter, out of any moneys in the Treasury not otherwise appropriated, amounts equivalent to 100 per centum of—

(1) the taxes imposed by sections 3101(b) and 3111(b) of the Internal Revenue Code of 1954 with respect to wages reported to the Secretary of the Treasury or his delegate pursuant to subtitle F of such Code after December 31, 1965, as determined by the Secretary of the Treasury by applying the applicable

rates of tax under such sections to such wages, which wages shall be certified by the Secretary of [Health, Education, and Welfare] *Health and Human Services* on the basis of records of wages established and maintained by the Secretary of [Health, Education, and Welfare] *Health and Human Services* in accordance with such reports; and

(2) the taxes imposed by section 1401(b) of the Internal Revenue Code of 1954 with respect to self-employment income reported to the Secretary of the Treasury or his delegate on tax returns unde subtitle F of such Code, as determined by the Secretary of the Treasury by applying the applicable rate of tax under such section to such self-employment income, which self-employment income shall be certified by the Secretary of [Health, Education, and Welfare] *Health and Human Services* on the basis of records of self-employment established and maintained by the Secretary of [Health, Education, and Welfare] *Health and Human Services* in accordance with such returns.

The amounts appropriated by the preceding sentence shall be transferred [monthly on the first day of each calendar month] *from time to time* from the general fund in the Treasury to the Trust Fund, such amounts to be determined on the basis of estimates by the Secretary of the Treasury of the taxes, specified in the preceding sentence, [to be paid to or deposited into the Treasury during such month] *paid to or deposited into the Treasury;* and proper adjustments shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or were less than the taxes specified in such sentence. [All amounts transferred to the Trust Fund under the preceding sentence shall be invested by the Managing Trustee in the same manner and to the same extent as the other assets of the Trust Fund; and the Trust Fund shall pay interest to the general fund on the amount so transferred on the first day of any month at a rate (calculated on a daily basis, and applied against the difference between the amount so transferred on such first day and the amount which would have been transferred to the Trust Fund up to that day under the procedures in effect on January 1, 1983) equal to the rate earned by the investments of the Trust Fund in the same month under subsection (c).]

* * * * * * *

(c) It shall be the duty of the Managing Trustee to invest such portion of the Trust Fund as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original issue at the issue price, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued [under the Second Liberty Bond Act, as amended] *under chapter 31 of title 31; United States Code,* are hereby extended to authorize the issuance at par of public-debt obligations for purchase by the Trust Fund. Such obligations issued for purchase by the Trust Fund shall have maturities fixed with due regard for the needs of the Trust Fund and shall bear interest at a rate equal to the average market yield (computed by the Managing Trustee on the basis of market quotations as of the end of the calendar month next proceding the date of such issue) on all marketable interest-bearing obligations of the United States then forming a part of the public debt which are not due or callable until after the expiration of 4 years from the end of such calendar month; except that where such average market yield is not a multiple of one-eighth of 1 per centum, the rate of interest on such obligation shall be the multiple of one-eighth of 1 per centum nearest such market yield. The Managing Trustee may purchase other interest-bearing obligations of the United States or obligations guaranteed as to both principal and interest by the United States, on original issue or at the market price, only where he determines that the purchase of such other obligations is in the public interest.

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(f)(1) The Managing Trustee is directed to pay from time to time from the Trust Fund into the Treasury the amount estimated by him as taxes imposed under section 3101(b) which are subject to refund under section 6413(c) of the Internal Revenue Code of 1954 with respect to wages paid after December 31, 1965. Such taxes shall be determined on the basis of records of wages established and maintained by the Secretary of [Health, Education, and Welfare] *Health and Human Services* in accordance with the wages reported to the Secretary of the Treasury or his delegate pursuant to subtitle F of the Internal Revenue Code of 1954, and the Secretary of [Health, Education, and Welfare] *Health and Human Services* shall furnish the Managing Trustee such information as may be required by the Managing Trustee for such purpose. The payments by the Managing Trustee shall be covered into the Treasury as repayments to the account for refunding internal revenue collections.

(2) Repayments made under paragraph (1) shall not be available for expenditures but shall be carried to the surplus fund of the Treasury. If it subsequently appears that the estimates under such paragraph in any particular period were too high or too low, appropriate adjustments shall be made by the Managing Trustee in future payments.

(g) There shall be transferred periodically (but not less often than once each fiscal year) to the Trust Fund from the Federal Old-Age and Survivors Insurance Trust Fund and from the Federal Disability Insurance Trust Fund amounts equivalent to the amounts not previously so transferred which the Secretary of [Health, Education, and Welfare] *Health and Human Services* shall have certified as overpayments (other than amounts so certified to the Railroad Retirement Board) pursuant to section 1870(b) of this Act. There shall be transferred periodically (but not less often than once each fiscal year) to the Trust Fund from the Railroad Retirement Account amounts equivalent to the amounts not previously so transferred which the Secretary of [Health, Education, and Welfare] *Health and Human Services* shall have certified as overpayments to the Railroad Retirement Board pursuant to section 1870(b) of this Act.

(h) The Managing Trustee shall also pay from time to time from the Trust Fund such amounts as the Secretary of [Health, Education, and Welfare] *Health and Human Services* certified are necessary to make the payments provided for by this part, and the payments with respect to administrative expenses in accordance with section 201(g)(1).

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HOSPITAL INSURANCE BENEFITS FOR UNINSURED INDIVIDUALS NOT OTHERWISE ELIGIBLE

SEC. 1818. (a) * * *

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(c) The provisions of section 1837 (except subsection (f) thereof), section 1838, subsection [(*a*)] *(b)* of section 1839, and subsections (f) and (h) of section 1840 shall apply to persons authorized to enroll under this section except that—

(1) individuals who meet the conditions of subsection (a) (1), (3), and (4) on or before the last day of the seventh month after the month in which this section is enacted may enroll under this part and (if not already so enrolled) may also enroll under part B during an initial general enrollment period which shall begin on the first day of the second month which begins after the date on which this section is enacted and shall end on the last day of the tenth month after the month in which this Act is enacted;

(2) in the case of an individual who first meets the conditions of eligibility under this section on or after the first day of the eighth month after the month in which this section is enacted, the initial enrollment period shall begin on the first day of the third month before the month in which he first becomes eligible and shall end 7 months later;

(3) in the case of an individual who enrolls pursuant to paragraph (1) of this subsection entitlement to benefits shall begin on—

(A) the first day of the second month after the month in which he enrolls,

(B) July 1, 1973, or

(C) the first day of the first month in which he meets the requirements of subsection (a),

whichever is the latest;

(4) termination of coverage under this section by the filing of notice that the individual no longer wishes to participate in the hospital insurance program shall take effect at the close of the month following the month in which such notice is filed;

(5) an individual's entitlement under this section shall teminate with the month before the first month in which he becomes eligible for hospital insurance benefits under section 226 of this Act or section 103 of the Social Security Amendments of 1965, and upon such termination, such individual shall be deemed, solely for purposes of hospital insurance entitlement, to have filed in such first month the application required to establish such entitlement; and

(6) termination of coverage for supplementary medical insurance shall result in simultaneous termination of hospital insurance benefits for uninsured individuals who are not otherwise entitled to benefits under this Act.

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PART B—SUPPLEMENTARY MEDICAL INSURANCE BENEFITS FOR THE AGED AND DISABLED

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SCOPE OF BENEFITS

SEC. 1832. (a) The benefits provided to an individual by the insurance program established by this part shall consist of—

(1) entitlement to have payment made to him or on his behalf (subject to the provisions of this part) for medical and other services, except those described in subparagraphs (B) and (D) of paragraph (2); and

(2) entitlement to have payment made on his behalf (subject to the provisions of this part) for—

(A) home health services;

(B) medical and other health services furnished by a provider of services or by others under arrangement with them made by a provider of services, excluding—

(i) physician services except where furnished by—

(I) a resident or intern of a hospital, or

(II) a physician to a patient in a hospital which has a teaching program approved as specified in paragraph (6) of section 1861(b) (including services in conjunction with the teaching programs of such hospital whether or not such patient is an inpatient of such hospital) where the conditions specified in paragraph (7) of such section are met[56], and

(ii) services for which payment may be made pursuant to section 1835(b)(2); and

(C) outpatient physical therapy services, other than services to which the next to last sentence of section 1861(p) applies;

(D) rural health clinic services;

(E) comprehensive outpatient rehabilitation facility services; and

(F) facility services furnished in connection with surgical procedures specified by the Secretary—

(i) pursuant to section 1833(i)(1)(A) and performed in an ambulatory surgical center (which meets health, safety, and other standards specified by the Secretary in regulations) if the center has an agreement in effect with the Secretary by which the center agrees to accept the amount determined under section 1833(i)(2)(A) as full payment for such services and to accept an assignment described in section 1842(b)(3)(B)(ii) with respect to payment for all such services furnished by the center to individuals enrolled under this part, or

(ii) pursuant to section 1833(i)(1)(B) and performed by a physician, described in [section 1861(r)(1)] *paragraph (1), (2), or (3) of section 1861 (r),* in his office, if the Secretary has determined that—

(I) a quality control and peer review organization (having a contract with the Secretary under part B of title XI of this Act) is willing, able, and has agreed to carry out a review (on a sample or other reasonable basis) of the physician's performing such procedures in the physician's office,

(II) the particular physician involved has agreed to make available to such [Organizatin] *Organization* such records as the Secretary determines to be necessary to carry out the review, and

(III) the physician is authorized to perform the procedure in a hospital located in the area in which the office is located,

and if the physician agrees to accept the amount determined under section 1833(i)(2)(B) as full payment for such services and to accept an assignment described in section 1842(b)(3)(B)(ii) with respect to payment for all services (including all pre- and post-operative services) described in paragraphs (1) and (2)(A) of section 1861(s) and furnished in connection with such surgical procedure to individuals enrolled under this part.

(b) For definitions of "spell of illness", "medical and other health services", and other terms used in this part, see section 1861.

PAYMENT OF BENEFITS

SEC. 1833. (a) Except as provided in section 1876, and subject to the succeeding provisions of this section, there shall be paid from the Federal Supplementary Medical Insurance Trust Fund, in the case of each individual who is covered under the insurance program established by this part and incurs expenses for services with respect to which benefits are payable under this part, amounts equal to—

(1) in the case of services described in section 1832(a)(1)—80 percent of the reasonable charges for the services; except that (A) an organization which provides medical and other health services (or arranges for their availability) on a prepayment basis may elect to be paid 80 percent of the reasonable cost of services for which payment may be made under this part on behalf of individuals enrolled in such organization in lieu of 80 percent of the reasonable charges for such services if the organization undertakes to charge such individuals no more than 20 percent of such reasonable cost plus any amounts payable by them as a result of subsection (b), (B) with respect to items and services described in section 1861(s)(10), the amounts paid shall be 100 percent of the reasonable charges for such items and services, (C) with respect to expenses incurred for those

physicians' services for which payment may be made under this part that are described in section 1862(a)(4), the amounts paid shall be subject to such limitations as may be prescribed by regulations, [(D) with respect to diagnostic tests performed in a laboratory for which payment is made under this part to the laboratory, the amounts paid shall be equal to 100 percent of the negotiated rate for such tests (as determined pursuant to subsection (h) of this section),] *(D) with respect to diagnostic laboratory tests for which payment is made under this part, the amounts paid shall be equal to 80 percent (or 100 percent, in the case of such tests for which payment is made on the basis of an assignment described in section 1842(b)(3)(B)(ii) or under the procedure described in section 1870(f)(1)) of the lesser of (i) the amount determined under subsection (h), or (ii) the amount of the charges billed for the tests,* (E) with respect to services furnished to individuals who have been determined to have end stage renal disease, the amounts paid shall be determined subject to the provisions of section 1881, (F) with respect to expenses incurred for physicians' services (furnished by a physician who has an agreement in effect with the Secretary by which the physician agrees to accept an assignment described in section 1842(b)(3)(B)(ii) with respect to payment for all physicians' services which are preadmission diagnostic services furnished by the physician to individuals enrolled under this part) which are preadmission diagnostic services for which payment may be made under this part and which are furnished (i) in the outpatient department of a hospital within seven days of such individual's adminssion to the same hospital as an inaptient or, to the extent practicable as determined by regulations prescribed by the Secretary, to another hospital, or (ii) to the extent practicable as determined by regulations prescribed by the Secretary, in a physician's office within seven days of such individual's admission to a hospital as an inpatient, the amounts paid shall be equal to the reasonable charges for such services, (G) with respect to expenses incurred for services described in subsection (i)(3) under the conditions specified in such subsection, the amounts paid shall be the reasonable charge for such services, and (H) with respect to items and services desscribed in section 1861(s)(10), the amounts paid shall be 100 percent of the reasonable charges for such items and services, [and]

[THE INDENTATIONS OF THE FOLLOWING SUBPARAGRAPHS, CLAUSES, AND SUBCLAUSES ARE REALIZED BY THE BILL TO CONFORM TO THE PRECEEDING SUBPARAGRAPH.]

(2) in the case of services described in section 1832(a)(2) (except those services described in subparagraphs (D), (E), and (F) of such section and in paragraph (5) of this subsection and unless otherwise specified in section 1881)—

(A) with respect to home health services and to items and services described in section 1861(s)(10), the lesser of—

(i) the reasonable cost of such services, as determined under section 1861(v), or

(ii) the customary charges with respect to such services, or, if such services are furnished by a public provider of services free of charge or at nominal charges to the public, the amount determined in accordance with section 1814(b)(2);

(B) with respect to other services (except those described in subparagraph (C) or (D) of this paragraph and except as may be provided in section 1886)—

(i) the lesser of—

(I) the reasonable cost of such services, as determined under section 1861(v), or

(II) the customary charges with respect to such services,

less the amount a provider may charge as described in clause (ii) of section 1866(a)(2)(A), but in no case may the payment for such other services exceed 80 percent of such reasonable cost, or

(ii) if such services are furnished by a public provider of services free of charge or at nominal charges to the public, 80 percent of the amount determined in accordance with section 1814(b)(2), or

(iii) if (and for so long as) the conditions described in section 1814(b)(3) are met, the amounts determined under the reimbursement system described in section; **[and]**

(C) with respect to services described in the second sentence of section 1861(p), 80 percent of the reasonable charges for such services; *and*

(D) with respect to diagnostic laboratory tests for which payment is made under this part, 100 percent of the lesser of (i) the amount determined under subsection (h), or (ii) the amount of the charges billed for the tests;

* * * * * * *

(b) Before applying subsection (a) with respect to expenses incurred by an individual during any calendar year, the total amount of the expense incurred by such individual during such year (which would, except for this subsection, constitute incurred expenses from which benefits payable under subsection (a) are determinable) shall be reduced by a deductible of $75 except that (1) such total amount shall not include expenses incurred (A) for radiological or pathological services furnished to such individual as an inpatient of a hospital by a physician in the field of radiology or pathology who has in effect an agreement with the Secretary by which the physician agrees to accept an assignment (as provided for in section 1842(b)(3)(B)(ii)) for all physicians' services furnished by him to hospital inpatients enrolled under this part, or (B) for items and services described in section 1861(s)(10), (2) such deductible shall not apply with respect to home health services, **[and]** (3) such total amount shall not include expenses incurred for services the amout of payment for which is determined under subsection (a)(1)(G) or under subsection (i)(2) or (i)(4), *and (4) such deductible shall not* *apply with respect to diagnostic laboratory tests for which payment is made under this part on the basis of an assignment described in section 1842(b)(3)(B)(ii), under the procedure described in section 1870(f)(1), or to a provider of services with an agreement in effect under section 1866.* The total amount of the expenses incurred by an individual as determined under the preceding sentence shall, after the reduction specified in such sentence, be further reduced by an amount equal to the expenses incurred for the first three pints of whole blood (or equivalent quantities of packed red blood cells, as defined under regulations) furnished to the individual during the calendar year, except that such deductible for such blood shall in accordance with regulations be appropriately reduced to the extent that there has been a replacement of such blood (or equivalent quantities of packed red blood cells, as so defined); and for such purposes blood (or equivalent quantities of packed red blood cells, as so defined); furnished such individual shall be deemed replaced when the institution or other person furnishing such blood (or equivalent quantities of packed red blood cells, as so defined) is given one pint of blood for each pint of blood (or equivalent quantities of packed red blood cells, as so defined) furnished such individual with respect to which a deduction is made under this sentence.

* * * * * * *

[(h) With respect to diagnostic tests performed in a laboratory for which payment is made under this part to the laboratory, the Secretary is authorized to establish a payment rate which is acceptable to the laboratory and which would be considered the full charge for such tests. Such negotiated rate shall be limited to an amount not in excess of the total payment that would have been made for the serivces in the absence of such a rate.]

(h)(1) The Secretary shall establish in accordance with this subsection a national fee schedule for diagnostic laboratory tests for which payment is made under this part.

(2) Except as provided in paragraph (4), the Secretary shall set the fee schedule at 60 percent of the prevailing charges paid under this part for similar diagnostic laboratory tests during the fee screen year beginning July 1, 1983, adjusted annually to reflect changes in the Consumer Price Index for All Urban Consumers (U.S. city average) and subject to such other adjustments as the Secretary determines are justified by technological changes.

(3) In addition to the amounts provided under the fee schedule, the Secretary shall provide for and establish a nominal fee to cover the costs in collecting the sample on a diagnostic laboratory test was performed and for which payment is made under this part, except that not more than one such fee may be provided under this paragraph with respect to samples collected in the same encounter.

(4)(A) During the three-year period beginning March 1, 1984, the Secretary may provide for the fee schedule under this subsection to be established on a regional or Statewide basis if the Secretary determines that a national fee schedule is inappropriate at such time because of limitations in the data available to establish such a schedule.

(B) In establishing a fee schedule under this subsection, the Secretary may provide for an adjustment to take into account, with respect to the portion of the expenses of diagnostic laboratory tests attributable to wages, the relative difference between a region's or local area's wage rates and the wage rate presumed in the data on which the schedule is based.

(5) In the case of a bill or request for payment for a diagnostic laboratory test for which payment may otherwise be made under this part—

(A) no payment may be made under this part to a physician with respect to such test unless the physician (or another physician with whom the physician shares his practice) personally performed or supervised the performance of the test, and

(B) payment for such a test performed by a laboratory which is independent of a physician's office or a rural health clinic may only be made on the basis of an assignment described in subsection (b)(3)(B)(ii), under the procedure described in section 1870(f)(1), or to a provider of services with an agreement in effect under 1866.

* * * * * * *

(k) With respect to services described in section 1861(s)(10)(B), the Secretary may provide, instead of the amount of payment otherwise provided under this part, for payment of such an amount or amounts as reasonably reflects the general cost of efficiently providing such services.

PROCEDURE FOR PAYMENT OF CLAIMS OF PROVIDERS OF SERVICES

SEC. 1835. (a) Except as provided in subsections (b), (c), and (e), payment for services described in section 1832(a)(2) furnished an individual may be made only to providers of services which are eligible therefor under section 1866(a), and only if—

(1) written request, signed by such individual, except in cases in which the Secretary finds it impracticable for the individual to do so, is filed for such payment in such form, in such manner and by such person or persons as the Secretary may by regulation prescribe, no later than the close of the period of 3 calendar years following the year in which such services are furnished (deeming any services furnished in the last 3 calendar months of any calendar year to have been furnished in the succeeding calendar year) except that, where the Secretary deems that efficient administration so requires, such period may be reduced to not less than 1 calendar year; and

(2) a physician certifies (and recertifies, where such services are furnished over a period of time, in such cases, with such frequency, and accompanied by such supporting material, appropriate to the case involved, as may be provided by regulations) that—

(A) in the case of home health services (i) such services are or were required because the individual is or was confined to his home (except when receiving items and services referred to in section 1861(m)(7) and needs or needed skilled nursing care on an intermittent basis or physical or speech therapy or, in the case of an individual who has been furnished home health services based on such a need and who no longer has such a need for such care or therapy, continues or continued to need occupational therapy, (ii) a plan for furnishing such services to such individual has been established and is periodically reviewed by a physician, and (iii) such services are or were furnished while the individual is or was under the care of a physician;

(B) in the case of medical and other health services except services described in subparagraphs (B), (C), and (D) of section 1861(s)(2), such services are or were medically required; [and]

(C) in the case of outpatient physical therapy services, (i) such services are or were required because the individual needed physical therapy services, (ii) a plan for furnishing such services has been established, [and is periodically reviewed by a physician] *by a physician or by the qualified physical therapist provided such services and is periodically reviewed by a physician,* and (iii) such services are or were furnished while the individual is or was under the care of a physician; [and]

[THE INDENTATION OF THE FOLLOWING SUBPARAGRAPH (D) IS REALIGNED BY THE BILL TO CONFORM TO THE PRECEDING SUBPARAGRAPH]

(D) in the case of outpatient speech pathology services, (i) such services are or were required because the individual needed speech pathology services, (ii) a plan for furnishing such services has been established by a physician or by the speech pathologist providing such services and is periodically reviewed by a physician, and (iii) such services are or were furnished while the individual is or was under the care of a physician; and

(E) in the case of comprehensive outpatient rehabilitation facility services, (i) such services are or were required because the individual needed skilled rehabilitation services, (ii) a plan for furnishing such services has been established and is periodically reviewed by a physician, and (iii) such services are or were furnished while the individual is or was under the care of a physician.

For purposes of this section, the term "provider of services" shall include a clinic, rehabilitation agency, or public health agency if, in the case of a clinic or rehabilitation agency, such clinic or agency meets the requirements of section 1861(p)(4)(A), or if, in the case of a public health agency, such agency meets the requirements of section 1861(p)(4)(B), but only with respect to the furnishing of outpatient physical therapy services (as therein defined).

To the extent provided by regulations, the certification and recertification requirements of paragraph (2) shall be deemed satisfied where at a later date, a physician makes a certification of the kind provided in subparagraph (A) or (B) of paragraph (2) (whichever would have applied), but only where such certification is accompanied by such medical and other evidence as may be required by such regulations. With respect to the physician certification required by paragraph (2) for home health services furnished to any individual by a home health agency (other than an agency which is a governmental entity) and with respect to the establishment and review of a plan of such services, the Secretary shall prescribe regulations which shall become effective no later than July 1, 1981, and which prohibit a physician who has a significant ownership interest in, or a significant financial or **[**contractural**]** *contractual* relationship with, such home health agency from performing such certification and from establishing or reviewing such plan, *except that such prohibition shall not apply with respect to a home health agency which is a sole community home health agency (as determined by the Secretary). For purposes of the preceding sentence, service by a physician as an uncompensated officer or director of a home health agency shall not constitute having a significant ownership interest in, or a significant financial or contractual relationship with, such agency.*

* * * * * * *

(e) For purposes of services (1) which are inpatient hospital services by reason of paragraph (7) of section 1861(b) or for which entitlement exists by reason of clause (II) of section 1832(a)(2)(B)(i), and (2) for which the reasonable cost thereof is determined under section 1861(v)(1)(D), (or would be if section 1886 did not apply) payment under this part shall be made to such fund as may be designated by the organized medical staff of the hospital in which such services were furnished or, if such services were furnished in such hospital by the faculty of a medical school, to such fund as may be designated by such faculty, but only if—

[(1)**]** *(A)* such hospital has an agreement with the Secretary under section 1866, and

[(2)**]** *(B)* the Secretary has received written assurances that *(i)* such payment will be used by such fund solely for the improvement of care to patients in such hospital or for educational or charitable purposes and **[**(B)**]** *(ii)* the individuals who were furnished such services or any other person will not be charged for such services (or if charged provision will be made for **[**return for**]** *return of* any moneys incorrectly collected).

* * * * * * *

ENROLLMENT PERIODS

SEC. 1837. (a) * * *

* * * * * * *

(g) All of the provisions of this section shall apply to individuals satisfying subsection (f), except that—

(1) in the case of an individual who satisfies subsection (f) by reason of entitlement to disability insurance benefits described in section **[**226(a)(2)(B)**]** *226(b),* his initial enrollment period shall begin on the first day of the later of (A) April 1973 or (B) the third month before the 25th month of such entitlement, and shall reoccur with each continuous period of eligibility (as

defined in section [1839(e)] *1839(d))* and upon attainment of age 65;

(2)(A) in the case of an individual who is entitled to monthly benefits under section 202 or 223 on the first day of his initial enrollment period or becomes entitled to monthly benefits under section 202 during the first 3 months of such period, his enrollment shall be deemed to have occurred in the third month of his initial enrollment period, and

(B) in the case of an individual who is not entitled to benefits under section 202 on the first day of his initial enrollment period and does not become so entitled during the first 3 months of such period, his enrollment shall be deemed to have occurred in the month in which he files the application establishing his entitlement to hospital insurance benefits provided such filing occurs during the last 4 months of his initial enrollment period; and

(3) in the case of an individual who would otherwise satisfy subsection (f) but does not establish his entitlement to hospital insurance benefits until after the last day of his initial enrollment period (as defined in subsection (d) of this section), his enrollment shall be deemed to have occurred on the first day of the earlier of the then current or immediately succeeding general enrollment period (as defined in subsection (e) of this section).

* * * * * * *

(i)(1) In the case of an individual who—

(A) meets the conditions described in clauses (i) and (iii) of section 1862(b)(3)(A),

(B) at the time the individual first satisfies paragraph (1) or (2) of section 1836, is enrolled in a group health plan described in section 1862(b)(3)(A)(iv) by reason of the individual's (or the individual's spouse's) current employment, and

(C) has elected not to enroll (or to be deemed enrolled) under this section during the individual's initial enrollment period,

there shall be a special enrollment period described in paragraph (3).

(2) In the case of an individual who—

(A) meets the conditions described in clauses (i) and (iii) of section 1862(b)(3)(A),

(B)(i) has enrolled (or has been deemed to have enrolled) in the medical insurance program established under this part during the individual's initial enrollment period and any subsequent special enrollment period under this subsection during which the individual was not enrolled in a group health plan described in section 1862(b)(3)(A)(iv) by reason of the individual's (or individual's spouse's) current employment, and

(C) has not terminated enrollment under this section at any time at which the individual is not enrolled in such a group health plan by reason of the individual's (or individual's spouse's) current employment,

there shall be a special enrollment period described in paragraph (3).

(3) The special enrollment period referred to in paragraph (1) and (2) is the period—

(A) beginning with the first day of the third month before the month in which the individual attains the age of 70 and ending seven months later, or

(B) beginning with the first day of the first month in which the individual is no longer enrolled in a group health plan described in section 1862(b)(3)(A)(iv) by reason of current employment and ending seven months later,

whichever period begins earlier.

COVERAGE PERIOD

SEC. 1838. (a) * * *

* * * * * * *

(e) Notwithstanding subsection (a), in the case of an individual who enrolls during a special enrollment period pursuant to—

(1) subparagraph (A) of section 1837(i)(3)—

(A) before the month in which he attains the age of 70, the coverage period shall begin on the first day of the month in which he has attained the age of 70, or

(B) in or after the month in which he attains the age of 70, the coverage period shall begin on the first day of the month following the month in which he so enrolls; or

(2) subparagraph (B) of section 1837(i)(3)—

(A) in the first month of the special enrollment period, the coverage period shall begin on the first day of such month, or

(B) in a month after the first month of the special enrollment period, the coverage period shall begin on the first day of the month following the month in which he so enrolls.

AMOUNTS OF PREMIUMS

SEC. 1839. (a)(1) The Secretary shall, during September of 1983 and of each year thereafter, determine the monthly actuarial rate for enrollees age 65 and over which shall be applicable for the succeeding calendar year. Such actuarial rate shall be the amount the Secretary estimates to be necessary so that the aggregate amount for such calendar year with respect to those enrollees age 65 and older will equal one-half of the total of the benefits and administrative costs which he estimates will be payable from the Federal Supplementary Medical Insurance Trust Fund for services performed and related administrative costs incurred in such calendar year with respect to such enrolles. In calculating the monthly actuarial rate, the Secretary shall include an appropriate amount for a contingency margin.

⟦(2) The monthly premium of each individual enrolled under this part for each month after December 1983 shall, except as provided in subsections (b) and (e), be the amount determined under paragraph (3).⟧

(2) The monthly premium for each individual enrolled under this part for each month after December 1985 shall, except as provided

in subsection (b), be an amount equal to 50 percent of the monthly actuarial rate for enrollees age 65 and over, as determined under paragraph (1) and applicable to such month.

(3) The Secretary shall, during September of 1983 and of each year thereafter, determine and promulgate the monthly premium applicable for individuals enrolled under this part for the succeeding calendar year. [The monthly premium shall (except as otherwise provided in subsection (e)) be equal to the smaller of—

[(A) the monthly actuarial rate for enrollees ages 65 and over, determined according to paragraph (1) of this subsection, for that calendar year, or

[(B) the monthly premium rate most recently promulgated by the Secretary under this paragraph, increased by a percentage determined as follows: The Secretary shall ascertain the primary insurance amount computed under section 215(a)(1), based upon average indexed monthly earnings of $900, that applied to individuals who became eligible for and entitled to old-age insurance benefits on November 1 of the year before the year of the promulgation.] He shall increase the monthly premium rate by the same percentage by which that primary insurance amount is increased when, by reason of the law in effect at the time the promulgation is made, it is so computed to apply to those individuals for the following November 1.

Whenever the Secretary promulgates the dollar amount which shall be applicable as the monthly premium for any period, he shall, at the time such promulgation is announced, issue a public statement setting forth the actuarial assumption and bases employed by him in arriving at the amount of an adequate actuarial rate for enrollees age 65 and older as provided in paragraph (1) and the derivation of the dollar amounts specified in this paragraph.

(4) The Secretary shall also, during September of 1983 and of each year thereafter, determine the monthly actuarial rate for disabled enrollees under age 65 which shall be applicable for the succeeding calendar year. Such actuarial rate shall be the amount the Secretary estimates to be necessary so that the aggregate amount for such calendar year with respect to disabled enrollees under age 65 which will equal one-half of the total of the benefits and administrative costs which he estimates will be payable from the Federal Supplementary Medical Insurance Trust Fund for services performed and related administrative costs incurred in such calendar year with repect to such enrollees. In calculating the monthly actuarial rate under this paragraph, the Secretary shall include an appropriate amount for a contingency margin.

* * * * * * *

(b) In the case of an individual whose coverage period began pursuant to an enrollment after his initial enrollment period (determined pursuant to subsection (c) or (d) of section 1837), the monthly premium determined under subsection (a) [or (c)] shall be increased by 10 percent of the monthly premium so determined for each full 12 months (in the same continuous period of eligibility) in which he could have been but was not enrolled. For purposes of the preceding sentence, there shall be taken into account (1) the months which elapsed between the close of his initial enrollment period and the close of the enrollment period in which he enrolled, plus (in the case of an individual who reenrolls) (2) the months which elapsed between the date of termination of a previous coverage period and the close of the enrollment period in which he reenrolled, *but there shall not be taken into account months in which the individual has met the conditions specified in clauses (i) and (iii) of section 1862(D)(3)(A) and can demonstrate that the individual was enrolled in a group health plan described in clause (iv) of such section by reason of the individual's (or the individual's spouse's) current employment.* Any increase in an individual's monthly premium under the first sentence of this subsection with respect to a particular continuous period of eligibility shall not be applicable with respect to any other continuous period of eligibility which such individual may have.

* * * * * * *

[(e)(1) Notwithstanding the provisions of subsection (a), the monthly premium for each individual enrolled under this part for each month after December 1983 and prior to January 1986 shall be an amount equal to 50 percent of the monthly actuarial rate for enrollees age 65 and over, as determined under subsection (a)(1) and applicable to such month.

[(2) Any increases in premium amounts taking effect prior to January 1986 by reason of paragraph (1) shall be taken into account for purposes of determining increases thereafter under subsection (a)(3).]

PAYMENT OF PREMIUMS

SEC. 1840. (a)(1) In the case of an individual who is entitled to monthly benefits under section 202 or 223, his monthly premiums under this part shall (except as provided in subsections (b)(1) and (c)) be collected by deducting the amount thereof from the amount of such monthly benefits. Such deduction shall be made in such manner and at such times as the Secretary shall by regulation prescribe.

(2) The Secretary of the Treasury shall, from time to time, transfer from the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund to the Federal Supplementary Medical Insurance Trust Fund the aggregate amount deducted under paragraph (1) for the period to which such transfer relates from benefits under section 202 or 223 which are payable from such Trust Fund. Such transfer shall be made on the basis of a certification by the Secretary of [Health, Education, and Welfare] *Health and Human Services* and shall be appropriately adjusted to the extent that prior transfers were too great or too small.

* * * * * * *

(d)(1) In the case of an individual receiving an annuity under subchapter III of chapter 83 of title 5, United States Code, or any other law administered by the [Civil Service Commission] *Director of the Office of Personnel Management* providing retirement or survivorship protection, to whom neither subsection (a) nor subsection (b) applies, his monthly premiums under this part (and the monthly premiums of the spouse of such individual under this part if neither subsection (a) nor subsection (b) applies to such spouse and if such individual agrees) shall, upon notice from the Secretary of [Health, Education, and Welfare] *Health and Human Services* to the [Civil Service Commission] *Director of the Office of Personnel Management,* be collected by deducting the amount thereof from each installment of such annuity. Such deduction shall be made in such manner and at such times as the [Civil Service Commission] *Director of the Office of Personnel Management* may determine. The [Civil Service Commission] *Director of the Office of Personnel Management* shall furnish such information as the Secretary of [Health, Education, and Welfare] *Health and Human Services* may reasonably request in order to carry out his functions under this part with respect to individuals to whom this subsection applies. A plan described in section 8903 of title 5, United States Code, may reimburse each annuitant enrolled in such plan an amount equal to the premiums paid by him under this part if such reimbursement is paid entirely from funds of such plan which are derived from sources other than the contributions described in section 8906 of such title.

(2) The Secretary of the Treasury shall, from time to time, but not less often than quarterly, transfer from the Civil Service Retirement and Disability Fund, or the account (if any) applicable in the case of such other law administered by the [Civil Service Commission] *Director of the Office of Personnel Management,* to the Federal Supplementary Medical Insurance Trust Fund, the aggregate amount deducted under paragraph (1) for the period to which such transfer relates. Such transfer shall be made on the basis of a certification by the [Civil Service Commission] *Director of the Office of Personnel Management* and shall be appropriately adjusted to the extent that prior transfers were too great or too small.

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FEDERAL SUPPLEMENTARY MEDICAL INSURANCE TRUST FUND

SEC. 1841. (a) * * *

* * * * * * *

(c) It shall be the duty of the Managing Trustee to invest such portion of the Trust Fund as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original issue at the issue price, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligaitons of the United States may be issued [under the Second Liberty Bond Act as amended *under chapter 31 of title 31, United States Code* are hereby extended to authorize the issuance at par of public-dept obligations for purchase by the Trust Fund. Such obligations issued for purchase by the Trust Fund shall have maturities fixed with due regard for the needs of the Trust Fund and shall bear interest at a rate equal to the average market yield (computed by the Managing Trustee on the basis of market quotations as of the end of the calendar month next preceding the date of such issue) on all marketable interest-bearing obligations of the United States then forming a part of the public debt which are not due or callable until after the expiration of 4 years from the end of such calendar month; except that where such average market yield is not a multiple of one-eighth of 1 per centum, the rate of interest on such obligations shall be the multiple of one-eighth of 1 percentum nearest such market yield. The Managing Trustee may purchase other interest-bearing obligations of the United States or obligations guaranteed as to both principal and interest by the United States, on original issue or at the market price, only where he determines that the purchase of such other obligations is in the public interest.

* * * * * * *

(f) There shall be transferred periodically (but not less often than once each fiscal year) to the Trust Fund from the Federal Old-Age and Survivors Insurance Trust Fund and from the Federal Disability Insurance Trust Fund amounts equivalent to the amounts not previously so transferred which the Secretary of [Health, Education, and Welfare] *Health and Human Services* shall have certified as overpayments (other than amounts so certified to the Railroad Retirement Board) pursuant to section 1870(b) of this Act. There shall be transferred periodically (but not less than once each fiscal year) to the Trust Fund from the Railroad Retirement Account amounts equivalent to the amounts not previously so transferred which the Secretary of [Health, Education, and Welfare] *Health and Human Services* shall have certified as overpayments to the Railroad Retirement Board pursuant to section 1870(b) of this Act.

(g) The Managing Trustee shall pay from time to time from the Trust Fund such amounts as the Secretary of [Health, Education, and Welfare] *Health and Human Services* certifies are necessary to make the payments provided for by this part, and the payments with respect to administrative expenses in accordance with section 201(g)(1).

(h) The Managing Trustee shall pay from time to time from the Trust Fund such amounts as the Secretary of [Health, Education, and Welfare] *Health and Human Services* certifies are necessary to pay the costs incurred by the [Civil Service Commission] *Director of the Office of Personnel Management* in making deductions pursuant to section 1840(d). During each fiscal year, or after the close of such fiscal year, the [Civil Service Commission] *Director of the Office of Personnel Management* shall certify to the the Secretary the amount of the cost [it] *the Director* incurred in making such deductions, and such certified amount shall be the basis for the amount of such costs certified by the Secretary to the Managing Trustee.

(i) The Managing Trustee shall pay from time to time from the Trust Fund such amounts as the Secretary of [Health, Education, and Welfare] *Health and Human Services* certifies are necessary to pay the costs incurred by the Railroad Retirement Board for services performed pursuant to section 1840(b)(1) and secton 1842(g). During each fiscal year or after the close of such fiscal year, the Railroad Retirement Board shall certify to the Secretary the amount of the costs it incurred in performing such services and such certified amount shall be the basis for the amount of such costs certified by the Secretary to the Managing Trustee.

USE OF CARRIERS FOR ADMINISTRATION OF BENEFITS

Sec. 1842. (a) * * *

(b)(1) Contracts with carriers under subsection (a) may be entered into without regard to section 3709 of the Revised Statutes or any other provision of law requiring competitive bidding.

(2) No such contract shall be entered into with any carrier unless the Secretary finds that such carrier will perform its obligations under the contract efficiently and effectively and will meet such requirements as to financial responsibility, legal authority, and other matters as he finds pertinent.

(3) Each such contract shall provide that the carrier—

(A) will take such action as may be necessary to assure that, where payment under this part for a service is on a cost basis, the cost is reasonable cost (as determined under section 1861(v));

(B) will take such action as may be necessary to assure that, where payment under this part for a service is on a charge basis such charge will be reasonable and not higher than the charge applicable, for a comparable service and under comparable circumstances, to the policyholders and subscribers of the carrier, and such payment will (except as otherwise provided in section 1870(f)) be made—

(i) on the basis of an itemized bill; or

(ii) on the basis of an assignment under the terms of which (I) the reasonable charge is the full charge for the service (except in the case of physicians' services and ambulance service furnished as described in section 1862(a)(4), other than for purposes of section 1870(f)) and (II) the physician or other person furnishing such service agrees not to charge for such service if payment may not be made therefor by reason of the provisions of paragraph (1) of section 1862 (a), and if the individual to whom such service was furnished was without fault in incurring the expenses of such service, and if the Secretary's determination that payment (pursuant to such assignment) was incorrect and was made subsequent to the third year following the year in which notice of such payment was sent to such individual; except that the Secretary may reduce such three-year period to not less than one year if he finds such reduction is consistent with the objectives of this title[.]

but (in the case of bills submitted, or requests for payment made, after March 1968) only if the bill is submitted, or a written request for payment is made in such other form as may be permitted under regulations, no later than the close of the calender year following the year in which such service is furnished (deeming any service furnished in the last 3 months of any calender year to have been furnished in the suceeding calendar year);

(C) will establish and maintain procedures pursuant to which an individual enrolled under this part will be granted an opportunity for a fair hearing by the carrier, in any case where the amount in controversy is $100 or more, when requests for payment under this part with respect to service furnished him are denied or are not acted upon with reasonable promptness or when the amount of such payment is in controversy;

(D) will furnish to the Secretary such timely information and reports as he may find necessary in performing his functions under this part;

(E) will maintain such records and afford such access thereto as the Secretary finds necessary to assure the correctness and verification of the information and reports under subparagraph (D) and otherwise to carry out the purposes of this part; and

(F) will take such action as may be necessary to assure that where payment under this part for a service rendered is on a charge basis, such payment shall be determined on the basis of the charge that is determined in accordance with this section on the basis of customary and prevailing charge levels in effect at the time the service was rendered or, in the case of services rendered more than 12 months before the year (ending on June 30) in which the bill is submitted or request for payment is made on the basis of such levels in effect for the 12-month period preceding such year,

and shall contain such other terms and conditions not inconsistent with this section as the Secretary may find necessary or appropriate. In determining the reasonable charge for services for purposes of this paragraph, there shall be taken into consideration the customary charges for similar service generally made by the physician or other person furnishing such services, as well as the prevailing charges in the locality for similar service. No charge may be determined to be reasonable in the case of bills submitted or requests for payment made under this part after December 31, 1970, if it exceeds the higher of (i) the prevailing charge recognized by the carrier and found acceptable by the Secretary for similar services in the same locality in administering this part on December 31, 1970, or (ii) the prevailing charge level that, on the basis of statistical data and methodology acceptable to the Secretary, would cover 75 percent of the customary charges made for similar services in the same locality during the last preceding calendar year elapsing prior to the start of the twelve-month period (beginning July 1, of each year) in which the service is rendered. In the case of physician services the prevailing charge level determined for purposes of clause (ii) of the preceding sentence for any twelve-month period (beginning after June 30, 1973) specified in clause (ii) of such sentence may not exceed (in the aggregate) the level determined under such clause for the fiscal year ending June 30, 1973, except to the extent that the Secretary finds, on the basis of appropriate economic index data, that such higher level is justified by economic changes. With respect to power-operated wheelchairs for which payment may be made in accordance with section 1861(s)(6), charges determined to be reasonable may not exceed the lowest charge at which power-operated wheelchairs are available in the locality. In the case of medical services, supplies, and equipment (including equipment servicing) that, in the judgment of the Secretary, do not generally vary significantly in quality form one supplier to another, the charges incurred after December 31, 1972, determined to be reasonable may not exceed the lowest charge levels at which such services, supplies, and equipment are widely and consistently available in a locality except to the extent and under the circumstances specified by the Secretary. The requirement in subparagraph (B) that a bill be submitted or request for payment be made by the close of the following calendar year shall not apply if (i) failure to submit the bill or request the payment by the close of such year is due to the error or misrepresentation of an officer, employee, fiscal intermediary, carrier, or agent of the Department of [Health, Education, and Welfare] *Health and Human Services*, performing functions under this title and acting within the scope of his or its authority, and (ii) the bill is submitted or the payment is requested promptly after such error or misrepresentation is eliminated or corrected. Notwithstanding the provisions of the third and fourth sentences preceding this sentence the prevailing charge level in the case of a physician service in a particular locality determined pursuant to such third and fourth sentences for the twelve-month period beginning on July 1 in any calendar year after 1974 shall, if lower than the prevailing charge level for the fiscal year ending June 30, 1975, in the case of a similar physician service in the same locality by reason of the application of economic index data, be raised to such prevailing charge level for the fiscal year ending June 30, 1975. The amount of any charges for outpatient services which shall be considered reasonable shall be subject to the limitations established by regulations issued by the Secretary pursuant to section 1861(v)(1)(K), and in determining the reasonable charge for such services, the Secretary may limit such reasonable charge to a percentage of the amount of the prevailing charge for similar services furnished in a physician's office, taking into account the extend to which overhead costs associated with such outpatient services has been included in reasonable cost or charge of the facility.

(4)(A) In determining the prevailing charge levels under the third and fourth sentences of paragraph (3) for physicians' services furnished to inpatients of a hospital, the Secretary shall not set any level higher than the same level as was set for the period ending June 30, 1983, in the case of that portion of the period ending June 30, 1984, which occurs after December 31, 1983.

(B) In determining the prevailing charge levels under the third and fourth sentences of paragraph (3) for physicians' services furnished to inpatients of a hospital for periods beginning after June 30, 1984, the Secretary shall treat the levels as set under subparagraph (A) as having fully provided for economic changes which would have been taken into account but for the limitations contained in subparagraph (A).

[(4)] *(5)* Each contract under this section shall be for a term of at least one year, and may be made automatically renewable from term to term in the absence of notice by either party of intention to terminate at the end of the current term; except that the Secretary may terminate any such contract at any time (after such resonable notice and opportunity for hearing to the carrier involved as he may provide in regulations) if he finds that the carrier has failed substantially to carry out the contract or is carrying out the contract in a manner inconsistent with the efficient and effective administration of the insurance program established by this part.

[(5)] *(6)* No payment under this part for a service provided to any individual shall (except as provided in section 1870) be made to anyone other than such individual or (pursuant to an assignment described in subparagraph (B)(ii) of paragraph (3)) the physician or other person who provided the service, except that payment may be made (A)*(i)* to the employer of such physician or other person if such physician or other person is required as a condition of his employment to turn over his fee for such service to his employer, or [(B)] *(ii)* (where the service was provided in a hospital, clinic, or other facility) to the facility in which the service was provided if there is a contractual arrangement between such physician or other person and such facility under which such facility submits the bill for such service, or *(B) to an entity (i) which provides coverage of the services under a health benefits plan, but only to the extent that payment is not made under this part, (ii) which has paid the person who provided the service an amount (including the amount payable under this part) which that person has accepted as payment in full for the service, and (iii) to which the individual has agreed in writing that payment may be made under this part.* No payment which under the preceding sentence may be made directly to the physician or other person providing the service involved (pursuant to an assignment described in subparagraph (B)(ii) or paragraph (3)) shall be made to anyone else under a reassignment or power of attorney (except to an employer or facility as described in clause (A) [or (B)] of such sentence); but nothing in this subsection shall be construed (i) to prevent the making of such a payment in accordance with an assignment from the individual to whom the service was provided or a reassignment from the physician or other person providing such service if such assignment or reassignment is made to a governmental agency or entity or is established by or pursuant to the order of a court of competent jurisdiction, or (ii) to preclude an agent of the physican or other person providing the service from receiving any such payment if (but only if) such agent does so pursuant to an agency agreement under which the compensation to be paid to the agent for his services for or in connection with the billing or collection of payments due such physician or other person under this title is unrelated (directly or indirectly) to the amount of such payments or the billings therefor, and is not dependent upon the actual collection of any such payment.

[(6)] *(7)* (A) In the case of physicians' services furnished to a patient in a hospital with a teaching program approved as specified in section 1861(b)(6) but which does not meet the conditions described in section 1861(b)(7), the carrier shall not provide (except on the basis described in subparagraph (C)) for payment for such services under this part—

(i) unless—

(I) the physician renders sufficient personal and identifiable physicians' services to the patient to exercise full, personal control over the management of the portion of the case for which the payment is sought,

(II) the services are of the same character as the services the physician furnishes to patients not entitled to benefits under this title, and

(III) at least 25 percent of the hospital's patients (during a representative past period, as determined by the Secretary) who were not entitled to benefits under this title and who were furnished services described in subclauses (I) and (II) paid all or a substantial part of charges (other than nominal charges) imposed for such services; and

(ii) to the extent that the amount of the payment exceeds the reasonable charge for the services (with the customary charge determined consistent with subparagraph (B)).

(B) The customary charge for such services in a hospital shall be determined in accordance with regulations issued by the Secretary and taking into account the following factors:

(i) In the case of a physician who has a substantial practice outside the teaching setting, the carrier shall take into account the amounts the physician charges for similar services in the physician's outside practice.

(ii) In the case of a physician who does not have a practice described in clause (i), if the hospital, its physicians, or other appropriate billing entity has established one or more schedules of charges which are collected for medical and surgical services, the carrier shall base payment under this title on the greater of—

(I) the charges (other than nominal charges) which are most frequently collected in full or substantial part with respect to patients who were not entitled to benefits under this title and who were furnished services described in subclauses (I) and (II) of subparagraph (A)(i), or

(II) the mean of the charges (other than nominal charges) which were collected in full or substantial part with respect to such patients.

(C) In the case of physicians' services furnished to a patient in a hospital with a teaching program approved as specified in section 1861(b)(6) but which does not meet the conditions described in section 1861(b)(7), if the conditions described in subclauses (I) and (II) of subparagraph (A)(i) are met and if the physician elects payment to be determined under this subparagraph, the carrier shall provide for payment for such services under this part on the basis of regulations of the Secretary governing reimbursement for the services of hospital-based physicians (and not on any other basis).

(D)(i) In the case of physicians' services furnished to a patient in a hospital with a teaching program approved as specified in section 1861(b)(6) but which does not meet the conditions described in section 1861(b)(7), no payment shall be made under this part for services of assistants at surgery with respect to a surgical procedure if such hospital has a training program relating to the medical specialty required for such surgical procedure and a qualified individual on the staff of the hospital is available to provide such services; except that payment may be made under this part for such services, to the extent that such payment is otherwise allowed under this paragraph, if such services, as determined under regulations of the Secretary—

(I) are required due to exceptional medical circumstances,

(II) are performed by team physicians needed to perform complex medical procedures, or

(III) constitute concurrent medical care relating to a medical condition which requires the presence of, and active care by, a physician of another specialty during surgery,

and under such other circumstances as the Secretary determines by regulation to be appropriate.

(ii) For purposes of this subparagraph, the term "assistant at surgery" means a physician who actively assists the physician in charge of a case in performing a surgical procedure.

(iii) The Secretary shall determine appropriate methods of reimbursement of assistants at surgery where such services are reimbursable under this part.

* * * * * * *

⟦(h) If a physician's bill or request for payment for a physician's services includes a charge to a patient for a laboratory test for which payment may be made under this part, the amount payable with respect to the test shall be determined as follows:

⟦(1) If the bill or request for payment indicates that the physician who submitted the bill or for whose services the request for payment was made personally performed or supervised the performance of the test or that another physician with whom the physician shares his practice personally performed or supervised the test, the payment shall be the reasonable charge for the test (less the applicable deductible and coinsurance amounts).

⟦(2) If the bill or request for payment indicates that the test was performed by a laboratory, identifies the laboratory, and indicates the amount the laboratory charged the physician who submitted the bill or for whose services the request for payment was made, payment for the test shall be the lower of—

⟦(A) the laboratory's reasonable charge to individuals enrolled under this part for the test, or

⟦(B) the amount the laboratory charged the physician for the test,

plus a nominal fee (where the physician bills for such a service) to cover the physician's costs in collecting and handling the sample on which the test was performed (less the applicable deductible and coinsurance amounts).

⟦(3) If the bill or request for payment (A) does not indicate who performed the test, or (B) indicates that the test was performed by a laboratory but does not identify the laboratory or include the amount charged by the laboratory, payment shall be the lowest charged at which the carrier estimates the test could have been secured by a physician from a laboratory serving the locality (less the applicable deductible and coinsurance amounts).⟧

STATE AGREEMENTS FOR COVERAGE OF ELIGIBLE INDIVIDUALS WHO ARE RECEIVING MONEY PAYMENTS UNDER PUBLIC ASSISTANCE PROGRAMS (OR ARE ELIGIBLE FOR MEDICAL ASSISTANCE)

SEC. 1843. (a) * * *

* * * * * * *

(d) In the case of any individual enrolled pursuant to this section—

(1) the monthly premium to be paid by the State shall be determined under section 1839 (without any increase under subsection (b) thereof);

(2) his coverage period shall begin on whichever of the following is the latest:

(A) July 1, 1966;

(B) the first day of the third month following the month in which the State agreement is entered into;

(C) the first day of the first month in which he is both an eligible individual and a member of a coverage group specified in the agreement under this section; or

(D) such date as may be specified in the agreement; and

(3) his coverage period attributable to the agreement with the State under this section shall end on the last day of whichever of the following first occurs:

(A) the month in which he is determined by the State agency to have become ineligible both for money payments of a kind specified in the agreement and (if there is in effect a modification entered into under subsection (h)) for medical assistance, or

(B) the month preceding the first month for which he becomes entitled to monthly benefits under title II or to an annuity or pension under the Railroad Retirement Act of [1937] *1974*.

* * * * * * *

APPROPRIATIONS TO COVER GOVERNMENT CONTRIBUTIONS AND CONTINGENCY RESERVE

SEC. 1844. (a) There are authorized to be appropriated from time to time out of any moneys in the Treasury not otherwise appropriated, to the Federal Supplementary Medical Insurance Trust Fund—

(1)(A) a Government contribution equal to the aggregate premiums payable for a month for enrollees age 65 and over under this part and deposited in the Trust Fund, multiplied by the ratio of—

(i) twice the dollar amount of the actuarially adequate rate per enrollee age 65 and over as determined under section 1839(a)(1) for such month minus the dollar amount of the premium per enrollee for such month, as determined under section [1839(a)(3) or 1839(e), as the case may be,] *1839(a)(2),* to

(ii) the dollar amount of the premium per enrollee for such month, plus

(B) a Government contribution equal to the aggregate premiums payable for a month for enrollees under age 65 under this part and deposited in the Trust Fund, multiplied by the ratio of—

(i) twice the dollar amount of the actuarially adequate rate per enrollee under age 65 as determined under section 1839(a)(4) for such month, minus the dollar amount of the premium per enrollee for such month, as determined under section **[**1839(a)(3) or 1839(e), as the case may be,**]** *1839(a)(2),* to

(ii) the dollar amount of the premium per enrollee for such month**[**.**]** *; plus*

* * * * * * *

PART C—MISCELLANEOUS PROVISIONS

DEFINITIONS OF SERVICES, INSTITUTIONS, ETC.

SEC. 1861. For purposes of this title—

Spell of Illness

(a) * * *

* * * * * * *

Inpatient Tuberculosis Hospital Services

[(d) The term "inpatient tuberculosis hospital services" means inpatient hospital services furnished to an inpatient of a tuberculosis hospital.**]**

Hospital

(e) The term "hospital" (except for purposes of sections 1814(d), 1814(f), and 1835(b), subsection (a)(2) of this section, paragraph (7) of this subsection, and subsection (i) of this section) means an institution which—

(1) is primarily engaged in providing, by or under the supervision of physicians, to inpatients (A) diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons, or (B) rehabilitation services for the rehabilitation of injured, disabled, or sick persons;

(2) maintains clinical records on all patients;

(3) has bylaws in effect with respect to its staff of physicians;

(4) has a requirement that every patient must be under the care of a physician;

(5) provides 24-hour nursing service rendered or supervised by a registered professional nurse, and has a licensed practical nurse or registered professional nurse on duty at all times; except that until January 1, 1979, the Secretary is authorized to waive the requirement of this paragraph for any one-year period with respect to any institution, insofar as such requirement relates to the provision of twenty-four-hour nursing service rendered or supervised by a registered professional nurse (except that in any event a registered professional nurse must

be present on the premises to render or supervise the nursing service provided, during at least the regular daytime shift), where immediately preceding such one-year period he finds that—

(A) such institution is located in a rural area and the supply of hospital services in such area is not sufficient to meet the needs of individuals residing therein,

(B) the failure of such institution to qualify as a hospital would seriously reduce the availability of such services to such individuals, and

(C) such institution has made and continues to make a good faith effort to comply with this paragraph, but such compliance is impeded by the lack of qualified nursing personnel in such area;

(6) has in effect a hospital utilization review plan which meets the requirements of subsection (k);

(7) in the case of an institution in any State in which State or applicable local law provides for the licensing of hospitals, (A) is licensed pursuant to such law or (B) is approved, by the agency of such State or locality responsible for licensing hospitals, as meeting the standards established for such licensing;

(8) has in effect an overall plan and budget that meets the requirements of subsection (z); and

(9) meets such other requirements as the Secretary finds necessary in the interest of the health and safety of the individuals who are furnished services in the institution.

For purposes of subsection (a)(2), such term includes any institution which meets the requirements of paragraph (1) of this subsection. For purposes of sections 1814(d) and 1835(b) (including determination of whether an individual received inpatient hospital services or diagnostic services for purposes of such sections), section 1814(f)(2), and subsection (i) of this section, such term includes any institution which (i) meets the requirements of paragraphs (5) and (7) of this subsection, (ii) is not primarily engaged in providing the services described in section 1861(j)(1)(A) and (iii) is primarily engaged in providing, by or under the supervision of individuals referred to in paragraph (1) of section 1861(r), to inpatients diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons. For purposes of section 1814(f)(1), such term includes an institution which (i) is a hospital for purposes of sections 1814(d), 1814(f)(2), and 1835(b) and (ii) is accredited by the Joint Commission on Accreditation of Hospitals, or is accredited by or approved by a program of the country in which such institution is located if the Secretary finds the accreditation or comparable approval standards of such program to be essentially equivalent to those of the Joint Commission on Accreditation of Hospitals. Notwithstanding the preceding provisions of this subsection, such term shall not, except for purposes of subsection (a)(2), include any institution which is primarily for the care and treatment of mental diseases [or tuberculosis unless it is a tuberculosis hospital (as defined in subsection (g)) or] unless it is a psychiatric hospital (as defined in subsection (f)).

* * * * * * *

[Tuberculosis Hospital

[(g) The term "tuberculosis hospital" means an institution which—

[(1) is primarily engaged in providing, by or under the supervision of a physician, medical services for the diagnosis and treatment of tuberculosis;

[(2) satisfies the requirements of paragraphs (3) through (9) of subsection (e);

[(3) maintains clinical records on all patients and maintains such records as the Secretary finds to be necessary to determine the degree and intensity of the treatment provided to individuals covered by the insurance program established by part A;

[(4) meets such staffing requirements as the Secretary finds necessary for the institution to carry out an active program of treatment for individuals who are furnished services in the institution; and

[(5) is accredited by the Joint Commission on Accreditation of Hospitals.

In the case of an institution which satisfies paragraphs (1) and (2) of the preceding sentence and which contains a distinct part which also satisfies paragraphs (3) and (4) of such sentence, such distinct part shall be considered to be a "tuberculosis hospital" if the institution is accredited by the Joint Commission on Accreditation of Hospitals or if such distinct part meets requirements equivalent to such accreditation requirements as determined by the Secretary.]

* * * * * * *

Skilled Nursing Facility

(j) The term "skilled nursing facility" means (except for purposes of subsection (a)(2)) an institution (or a distinct part of an institution) which has in effect a transfer agreement (meeting the requirements of subsection (l)) with one or more hospitals having agreements in effect under section 1866 and which—

(1) is primarily engaged in providing to inpatients (A) skilled nursing care and related services for patients who require medical or nursing care, or (B) rehabilitation services for the rehabilitation of injured, disabled, or sick persons;

(2) has policies, which are developed with the advice of (and with provision [of] *for* review of such policies from time to time by) a group of professional personnel, including one or more physicians and one or more registered professional nurses, to govern the skilled nursing care and related medical or other services it provides;

(3) has a physician, a registered professional nurse, or a medical staff responsible for the execution of such policies;

(4)(A) has a requirement that the health care of every patient must be under the supervision of a physician, and (B) provides for having a physician available to furnish necessary medical care in case of emergency;

(5) maintains clinical records on all patients;

(6) provides 24-hour nursing service which is sufficient to meet nursing needs in accordance with the policies developed as provided in paragraph (2), and has at least one registered professional nurse employed full time;

(7) provides appropriate methods and procedures for the dispensing and administering of drugs and biologicals;

(8) has in effect a utilization review plan which meets the requirements of subsection (k);

(9) in the case of an institution in any State in which State or applicable local law provides for the licensing of institutions of this nature, (A) is licensed pursuant to such law, or (B) is approved, by the agency of such State, or locality responsible for licensing institutions of this nature, as meeting the standards established for such licensing;

(10) has in effect an overall plan and budget that meets the requirements of subsection (z);

(11) complies with the requirements of section 1124;

(12) cooperates in an effective program which provides for a regular program of independent medical evaluation and audit of the patients in the facility to the extent required by the programs in which the facility participates (including medical evaluation of each patient's need for skilled nursing facility care);

(13) meets such provisions of such edition (as is specified by the Secretary in regulations) of the Life Safety Code of the National Fire Protection Association as are applicable to nursing homes; except that the Secretary may waive, for such periods as he deems appropriate, specific provisions of such Code which if rigidly applied would result in unreasonable hardship upon [a nursing home] *an institution,* but only such waiver will not adversely affect the health and safety of the patients; except that the provisions of such Code shall not apply in any State if the Secretary finds that in such State there is in effect a fire and safety code, imposed by State law, which adequately protects patients in nursing facilities;

* * * * * * *

(15) meets such other conditions relating to the health and safety of individuals who are furnished services in such institution or relating to the physical facilities thereof as the Secretary may find necessary (subject to the second sentence of section 1863), except that the Secretary shall not require as a condition of participation that medical social services be furnished in any such institution. Notwithstanding any other provision of law, all information concerning skilled nursing facilities required by this subsection to be filed with the Secretary shall be made available to Federal or State employees for purposes consistent with the effective administration of programs established under titles XVIII and XIX of this Act;

except that such term shall not (other than for purposes of subsection (a)(2)) include any institution which is primarily for the care and treatment of mental diseases [or tuberclosis].

* * * * * * *

Outpatient Physical Therapy Services

(p) The term "outpatient physical therapy services" means physical therapy services furnished by a provider of services, a clinic, rehabilitation agency, or a public health agency, or by others under an arrangement with, and under the supervision of, such provider, clinic, rehabilitation agency, or public health agency to an individual as an outpatient—

(1) who is under the care of a physician (as defined in [section 186(r)(1)] *paragraph (1) or (3) of section 1861(r)),* and

(2) with respect to whom a plan prescribing the type, amount, and duration of physical therapy services that are to be furnished such individual has been established[, and is periodically reviewed, by a physician (as so defined)] *by a physician (as so defined) or by a qualified physical therapist and is periodically reviewed by a physician (as so defined);*

* * * * * * *

Physician

(r) The term "physician", when used in connection with the performance of any function or action, means (1) a doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the State in which he performs such function or action (including a physician within the meaning of section 1101(a)(7)), (2) a doctor of dental surgery or of dental medicine who is legally authorized to practice dentistry by the State in which he performs such function and who is acting within the scope of his license when he performs such functions, (3) a doctor of podiatric medicine for the purposes of subsection (s) of this section but only with respect to functions which he is legally authorized to perform as such by the State in which he performs them; and for the purposes of subsections (k) [and (m)], *(m), and (p)(1)* of this section and sections 1814(a), *1832(a)(2)(F)(ii),* and 1835 but only if his performance of functions under subsections (k) and (m) and sections 1814(a) and 1835 is consistent with the policy of the institution or agency with respect to which he performs them and with the functions which he is legally authorized to perform, (4) a doctor of optometry who is legally authorized to practice optometry by the State in which he performs such function, but only with respect to services related to the condition of aphakia, or (5) a chiropractor who is licensed as such by the State (or in a State which does not license chiropractors as such, is legally authorized to perform the services of a chiropractor in the jurisdiction in which he performs such services), and who meets uniform minimum standards promulgated by the Secretary, but only for the purpose of sections 1861(s)(1) and 1861(s)(2)(A) and only with respect to treatment by means of manual manipulation of the spine (to correct a subluxation demonstrated by X-ray to exist) which he is legally authorized to perform by the State or jurisdiction in which such treatment is provided. For the pruposes of section 1862(a)(4) and subject to the limitations and conditions provided in the previous sentence, such term includes a doctor of one of the arts, specified in such previous sentence, legally authorized to practice such art in the country in which the inpatient hospital services (referred to in such section 1862(a)(4)) are furnished.

Medical and Other Health Services

(s) The term "medical and other health services" means any of the following items or services:

(1) * * *

* * * * * * *

(10)*(A)* pneumococcal vaccine and its administration**[**.**]**; *and (B) hepatitis B vaccine and its administration, furnished in a hospital or a renal dialysis facility.*

Provider of Services

(u) The term "provider of services" means a hospital, skilled nursing facility, comprehensive outpatient rehabilitation facility, **[**or**]** home health agency, hospice program or, for purposes of section 1814(g) and section 1835(e), a fund.

Reasonable Cost

(v)(1)(A) The reasonable cost of any services shall be the cost actually incurred, excluding therefrom any part of incurred cost found to be unnecessary in the efficient delivery of needed health services, and shall be determined in accordance with regulations establishing the method or methods to be used, and the items to be included, in determining such costs for various types or classes of institutions, agencies and services; except that in any case to which paragraph (2) or (3) applies, the amount of the payment determined under such paragraph with respect to the services involved shall be considered the reasonable cost of such services. In prescribing the regulations referred to in the preceding sentence, the Secretary shall consider, among others things, the principles generally applied by national organizations or established prepayment organizations (which have developed such principles) in computing the amount of payment, to be made by persons other than the recipients of services, to providers of services on account of services furnished to such recipients by such providers. Such regulations may provide for determination of the costs of services on a per diem, per unit, per capita, or other basis, may provide for using different methods in different circumstances, may provide for the use of estimates of costs of particular items or services, may provide for the establishment of limits on the direct or indirect overall incurred costs or incurred costs of specific items or services or groups of items or services to be recognized as reasonable based on estimates of the costs necessary in the efficient delivery of needed health services to individuals covered by the insurance programs established under this title, and may provide for the use of charges or a percentage of charges where this method reasonably reflects the costs. Such regulations shall (i) take into account both direct and indirect costs of providers of services (excluding therefrom any such costs, including standby costs, which are determined in accordance with regulations to be unnecessary in the efficient delivery of services covered by the insurance programs established under this title) in order that, under the methods of determining costs, the necessary costs of efficiently delivering covered services to individuals covered by the insurance programs established by this title will not be borne by individuals not so covered, and the costs with respect to individuals not so covered will not be borne by such insurance programs, and (ii) provide for the making of suitable retroactive corrective adjustments where, for a provider of services for any fiscal period, the aggregate reimbursement produced by the methods of determining costs proves to be either inadequate or excessive.

[THE INDENTATIONS OF THE FOLLOWING SUBPARAGRAPHS ARE REALIGNED BY THE BILL TO CONFORM TO THE PRECEDING SUBPARAGRAPH]

(B) Such regulations in the case of extended care services furnished by proprietary facilities shall include provision for specific recognition of a reasonable return on equity capital, including necessary working capital, invested in the facility and used in the furnishing of such services, in lieu of other allowances to the extent that they reflect similar items. The rate of return recognized pursuant to the preceding sentence for determining the reasonable cost of any services furnished in any fiscal period shall not exceed one and one-half times the average of the rates of interest, for each of the months any part of which is included in such fiscal period, on obligations issued for purchase by the Federal Hospital Insurance Trust Fund.

(C) Where a hospital has an arrangement with a medical school under which the faculty of such school provides services at such hospital, an amount not in excess of the reasonable cost of such services to the medical school shall be included in determining the reasonable cost to the hospital of furnishing services—

(i) for which payment may be made under part A, but only [if] *if—*

(I) payment for such services as furnished under such arrangement would be made under part A to the hospital had such services been furnished by the hospital, and

(II) such hospital pays to the medical school at least the reasonable cost of such services to the medical school, or

(ii) for which payment may be made under part B, by only if such hospital pays to the medical school at least the reasonable cost of such services to the medical school.

(D) Where (i) physicians furnish services which are either inpatient hospital services (including services in conjunction with the teaching programs of such hospital) by reason of paragraph (7) of subsection (b) of for which entitlement exists by reason of clause (II) of section [1832(a)(2)(B)(i)] *1832(a)(2)(B)(i),* and (ii) such hospital (or medical school under arrangement with such hospital) incurs no actual cost in the furnishing of such services, the reasonable cost of such services shall (under regulations of the Secretary) be deemed to be the cost such hospital or medical school would have incurred had it paid a salary to such physicians rendering such services approximately equivalent to the average salary paid to all physicians employed by such hospital (or if such employment does not exist, or is minimal in such hospital, by similar hospitals in a geographic area of sufficient size to assure reasonable inclusion of sufficient physicians in development of such average salary).

(E)(i) Such regulations shall provide that any determination of reasonable cost with respect to services provided by hospital-based skilled nursing facilities shall be made on the basis of a single standard based on the reasonableness of costs incurred by free standing skilled nursing facilities, subject to such adjustments as the Secretary may deem appropriate.

(ii) Such regulations may, in the case of skilled nursing facilities in any State, provide for the ⟦uses⟧ *use* of rates, developed by the State in which such facilities are located, for the payment of the cost of skilled nursing facility services furnished under the State's plan approved under title XIX (and such rates may be increased by the Secretary on a class or size of institution or on a geographical basis by a percentage factor not in excess of 10 percent to take into account determinable items or services or other requirements under this title not otherwise included in the computation of such State rates), if the Secretary finds that such rates are reasonably related to (but not necessarily limited to) analyses undertaken by such State of costs of care in comparable facilities in such State.

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(I) In determining such reasonable cost, the Secretary may not include any costs incurred by a provider with respect to any services furnished in connection with matters for which payment may be made under this title and furnished pursuant to a contract between the provider and any of its subcontractors which is entered into after the date of the enactment of this subparagraph and the value or cost of which is ⟦$10,000⟧ *$50,000* or more over a twelve-month peroid unless the contract contains a clause to the effect that—

(i) until the expiration of four years after the furnishing of such services pursuant to such contract, the subcontractor shall make available, upon written request ⟦to the Secretary, or upon request to the comptroller General⟧ *by the Secretary, or upon request by the comptroller General,* or any of their duly authorized representatives, the contract, and books, documents and records of such subcontractor that are necessary to certify the nature and extent of such costs, and

(ii) if the subcontractor carries out any of the duties of the contract through a subcontract, with a value or cost of $10,000 or more over a twelve-month period, with a related organization, such subcontract shall contain a clause to the effect that until the expiration of four years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request ⟦to the Secretary, or upon request to the comptroller General⟧ *by the Secretary, or upon request by the comptroller General,* or any of their duly authorized representatives, the subcontract, and books, documents and records of such organization that are necessary to verify the nature and extent of such costs.

The Secretary shall prescribe in regulation criteria and procedures which the Secretary shall use in obtaining access to books, documents, and records under clauses required in contracts and subcontracts under this subparagraph.

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(3) If the bed and board furnished as part of inpatient hospital services (including inpatient tuberculosis hospital services and inpatient psychiatric hospital services) or post-hospital extended care services is in accommodations other than, but not more expensive than, semi-private accommodations and the use of such other accommodations rather than semi-private accommodations was neither at the request of the patient nor for a reason which the Secretary determines is consistent with the purposes of this title, the amount of the payment with respect to such bed and board under part A shall be the amount otherwise payable under this title for such bed and board furnished in [semiprivate] *semi-private* accommodations minus the difference between the charge customarily made by the hospital or skilled nursing facility for bed and board in semi-private accommodations and the charge customarily made by it for bed and board in the accommodations furnished.

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Institutional Planning

(z) An overall plan and budget of a hospital, skilled nursing facility, comprehensive outpatient rehabilitation facility,[166] or home health agency shall be considered sufficient if it—

(1) provides for an annual operating budget which includes all anticipated income and expenses related to items which would, under generally accepted accounting principles, be considered income and expense items (except that nothing in this paragraph shall require that there be prepared, in connection with any budget, an item-by-item identification of the components of each type of anticipated expenditure or income);

(2)(A) provides for a capital expenditures plan for at least a 3-year period (including the year to which the operating budget described in [subparagraph] *paragraph* (1) is applicable) which includes and identifies in detail the anticipated sources of financing for, and the objectives of, each anticipated expenditure in excess of $600,000 (or such lesser amount as may be established by the State under section 1122(g)(1) in which the hospital is located) related to the acquisition of land, the improvement of land, buildings, and equipment, and the replacement, modernization, and expansion of the buildings and equipment which would, under generally accepted accounting principles, be considered capital items;

(B) provides that such plan is submitted to the agency designated under section 1122(b), or if no such agency is designated, to the appropriate health planning agency in the State (but this subparagraph shal not apply in the case of a facility exempt from review under section 1122 by reason of section 1122(j));

* * * * * * *

Rural Health Clinic Services

(aa)(1) The term "rural health clinic services" means—

(A) physicians' services and such services and supplies as are covered under section 1861(s)(2)(A) if furnished as an incident to a physician's professional service and items and services described in section 1861(s)(10),

(B) such services furnished by a physician assistant or by a nurse practitioner and such services and supplies furnished as an incident to his service as would otherwise be covered if furnished by a physician or as an incident to a physician's service, and

(C) in the case of a rural health clinic located in an area in which there exists a shortage of home health agencies, part-time or intermittent nursing care and related medical supplies (other than drugs and biologicals) furnished by a registered professional nurse or licensed practical nurse to a homebound individual under a written plan of treatment (i) established and periodically reviewed by a physician described in paragraph (2)(B), or (ii) established by a nurse practitioner or physician assistant and periodically reviewed and approved by a physician described in paragraph (2)(B),

when furnished to an individual as an outpatient of a rural health clinic.

(2) The term "rural health clinic" means a facility which—

(A) is primarily engaged in furnishing to outpatients services described in subparagraphs (A) and (B) of paragraph (1);

(B) in the case of a facility which is not a physician-directed clinic, has an arrangement (consistent with the provisions of State and local law relative to the practice, performance, and delivery of health services) with one or more physicians (as defined in subsection (r)(1)) under which provision is made for the periodic review by such physicians of covered services furnished by physician assistants and nurse practitioners, the supervision and guidance by such physicians of physician assistants and nurse practitioners, the preparation by such physicians of such medical orders for care and treatment of clinic patients as may be necessary, and the availability of such physicians for such referral of and consultation for patients as is necessary and for advice and assistance in the management of medical emergencies; and, in the case of a physician-directed clinic, has one or more of its staff physicians perform the activities accomplished through such an arrangement;

(C) maintains clinical records on all patients;

(D) has arrangements with one or more hospitals, having agreements in effect under section 1866, for the referral and admission of patients requiring inpatient services or such diagnostic or other specialized services as are not available at the clinic;

(E) has written policies, which are developed with the advice of (and with provision for review of such policies from time to time by) a group of professional personnel, including one or more physicians and one or more physician assistants or nurse practitioners, to govern those services described in paragraph (1) which it furnishes;

(F) has a physician, physician assistant, or nurse practitioner responsible for the execution of policies described in a subparagraph (E) and relating to the provision of the clinic's services;

(G) directly provides routine diagnostic services, including clinical laboratory services, as prescribed in regulations by the Secretary, and has prompt access to additional diagnostic services from facilities meeting requirements under this title;

(H) in compliance with State and Federal law, has available for administering to patients of the clinic at least such drugs and biologicals as are determined by the Secretary to be necessary for the treatment of emergency cases (as defined in regulations) and has appropriate procedures or arrangements for storing, administering, and dispensing any drugs and biologicals;

(I) has appropriate procedures for review of [ultilization] *utilization* of clinic services to the extent that the Secretary determines to be necessary and feasible; and

(J) meets such other requirements as the Secretary may find necessary in the interest of the health and safety of the individuals who are furnished services by the clinic.

* * * * * * *

Comprehensive Outpatient Rehabilitation Facility Services

(cc)(1) The term "comprehensive outpatient rehabilitation facility services" means the following items and services furnished by a physician or other qualified professional personnel (as defined in regulations by the Secretary) to an individual who is an outpatient of a comprehensive outpatient rehabilitation facility under a plan (for furnishing such items and services to such individual) established and periodically reviewed by a physician—

(A) physicians' services;

(B) physical therapy, occupational therapy, speech pathology services, and respiratory therapy;

(C) prosthetic and orthotic devices, including testing, fitting, or training in the use of prosthetic and orthotic devices;

(D) social and psychological services;

(E) nursing care provided by or under the supervision of a registered professional nurse;

(F) drugs and biologicals which cannot, as determined in accordance with regulations, be [self administered] *self-administered*;

(G) supplies, appliances, and equipment, including the purchase or rental of equipment; and

(H) such other items and services as are medically necessary for the rehabilitation of the patient and are ordinarily furnished by comprehensive outpatient rehabilitation facilities, excluding, however, any item or service if it would not be included under subsection (b) if furnished to an inpatient of a hospital.

(2) The term "comprehensive outpatient rehabilitation facility" means a facility which—

(A) is primarily engaged in providing (by or under the supervision of physicians) diagnostic, therapeutic, and restorative services to outpatients for the rehabilitation of injured, disabled, or sick persons;

(B) provides at least the following comprehensive outpatient rehabilitation services: (i) physicians' services (rendered by physicians, as defined in section 1861(r)(1), who are available at the facility on a full- or part-time basis); (ii) physical therapy; and (iii) social or psychological services;

(C) maintains clinical records on all patients;

(D) has policies established by a group of professional personnel (associated with the facility) including one or more physicians defined in subsection (r)(1) to govern the comprehensive outpatient rehabilitation services it furnishes, and provides for the carrying out of such policies by a full- or part-time physician referred to in subparagraph (B)(i);

(E) has a requirement that every patient must be under the care of a physician;

(F) in the case of a facility in any State in which State or applicable local law provides for the licensing of facilities of this nature (i) is licensed pursuant to such law, or (ii) is approved by the agency of such State or locality, responsible for licensing facilities of this nature, as meeting the [standard establishment] *standards established* for such licensing;

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EXCLUSIONS FROM COVERAGE

SEC. 1862. (a) Notwithstanding any other provisions of this title, no payment may be made under part A or part B for any expenses incurred for items or services—

(1)(A) * * *

* * * * * * *

(12) where such expenses are for services in connection with the care, treatment, filling, removal, or replacement of teeth or structures directly supporting teeth, except that payment may be made under part A in the case of inpatient hospital services in connection with the provision of such dental services if the individual, because of his underlying medical condition and clinical status or because of the severity of the dental procedure, [,] requires hospitalization in connection with the provision of such services;

* * * * * * *

(b)(1) Payment under this title may not be made with respect to any item or service to the extent that payment has been made, or can reasonably be expected to be made *promptly* (as determined in accordance with regulations), with respect to such item or service, under a workmen's compensation law of the United States or a

State or under an automobile or liability insurance policy or plan (including a self-insured plan) or under no fault insurance. Any payment under this title with respect to any item or service shall be conditioned on reimbursement to the appropriate Trust Fund established by this title when notice or other information is received that payment for such item or service has been *or may be* made under such a law or plan, policy, plan, or insurance. *The United States may recover the amount of any such payment under this title by bringing an action against the entity responsible for payment under such a law, policy, plan, or insurance (if the entity would be required to make payment if an appropriate claim were pursued, but only to the extent that the entity has not already made payment), by bringing an action against the entity to which payment has been so made (if the entity is other than the individual entitled to benefits under this title), or by joining or intervening in any action related to the events that gave rise to the need for the item or service, and shall be subrogated (to the extent of the payment under this title) to any right of the individual or any other entity to payment under such a law, policy, plan, or insurance.* The Secretary may waive the provisions of this subsection in the case of an individual claim if he determines that the probability of recovery or amount involved in such claim does not warrant the pursuing of the claim.

(2)(A) In the case of an individual who is entitled to benefits under part A or is eligible to enroll under part B solely by reason of section 226A, payment under this title may not be made, except as provided in subparagraph (B), with respect to any item or service furnished during the period described in subparagraph (C) to the extent that payment with respect to expenses for such item or service (i) has been made under any group health plan (as defined in 162(i)(2) of the Internal Revenue Code of 1954) or (ii) the Secretary determines will be made under such a plan as promptly as would otherwise be the case if payment were made by the Secretary under this title.

(B) Any payment under this title with respect to any item or service furnished to an individual described in subparagraph (A) during the period described in subparagraph (C) shall be conditioned on reimbursement to the appropriate Trust Fund established by this title when notice or other information is received that payment for such item or service has been or may be made under a plan described in subparagraph (A). *The United States may recover the amount of any such payment under this title by bringing an action against the entity responsible for payment under such a plan (if the entity would be required to make payment if an appropriate claim were pursued, but only to the extend that the entity has not already made payment), by bringing an action against the entity to which payment has been so made (if the entity is other than the individual entitled to benefits under this title), or by joining or intervening in any action related to the events that gave rise to the need for the item or service, and shall be subrogated (to the extent of the payment under this title) to any right of the individual or any other entity to payment under such a plan.* The Secretary may waive the provisions of this subparagraph in the case of an individual claim if he determines that the probability of recovery or amount involved in such claims does not warrant the pursuing of the claim.

(C) The provisions of subparagraph (A) and (B) shall apply to an individual only during the 12-month period which begins with the earlier of—

(i) the month in which a regular course of renal dialysis is initiated, or

(ii) in the case of an individual who receives a kidney transplant, the first month in which he would be eligible for benefits under this title (if he had filed an application for such benefits) under the provisions of section 226A(b)(1)(B).

(D) Where payment for an item or service under such plan is less than the amount of the charge for such item or service, payment may be made under this title (without regard to deductibles and coinsurance under this title) for the remainder of such charge, but—

(i) such payment under this title may not exceed an amount which would be payable under this title for such item or service in the absence of such group health plan; and

(ii) such payment under this title, when combined with the amount payable under such plan, may not exceed the combined amount which would have been payable under this title and such plan if this paragraph were not in effect.".

(3)(A)(i) Payment under this title may not be made, except as provided in clause (ii), with respect to any item or service furnished in any month during the period described in clause (iii) to an individual who is over 64 but under 70 years of age during any part of such month (or to the spouse of such individual, if the spouse is over 64 but under 70 years of age) who is employed at the time such item or service is furnished to the extent that payment with respect to expenses for such item or service has been made, or can reasonably be expected to be made, under a group health plan (as defined in clause (iv)) under which such individual is covered by reason of such employment.

(ii) Any payment under this title with respect to any item or service during the period described in clause (iii) shall be conditioned on reimbursement to the appropriate Trust fund established by this title when notice or other information is received that payment for such item or service has been *or may be* made under a group health plan. *The United States may recover the amount of any such payment under this title by bringing an action against the entity responsible for payment under such a plan (if the entity would be required to make payment if an appropriate claim were pursued, but only to the extent that the entity has not already made payment), by bringing an action against the entity to which payment has been so made (if the entity is other than the individual entitled to benefits under this title), or by joining or intervening in any action related to the events that gave rise to the need for the item or service, and shall be subrogated (to the extent of the payment under this title) to any right of the individual or any other entity to payment under such a plan.* The secretary may waive the provisions of this clause in the case of an individual claim if he determines that the probability of recovery or amount involved in such claim does not warrant the pursuing of the claim.

(iii) The provisions of clauses (i) and (ii) shall apply to an individual only for the period beginning with the month in which such individual becomes entitled to benefits under this title under section

226(a) and ending with the month *before the month* in which such individual attains the age of 70 and shall not include any month for which the individual would, upon application, be entitled to benefits under section 226A.

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CONSULTATION WITH STATE AGENCIES AND OTHER ORGANIZATIONS TO DEVELOP CONDITIONS OF PARTICIPATION FOR PROVIDERS OF SERVICES

SEC. 1863. In carrying out his functions, relating to determination of conditions of participation by providers of services, under subsections (e)(9), (f)(4), [(g)(4),] [(j)(11),] *(j)(15),* (o)(6), (cc)(2)(I), and (dd)(2) of section 1861, or by ambulatory surgical centers under section 1832(a)(2)(F)(i), the Secretary shall consult with [the Health Insurance Benefits Advsory Council established by section 1867, appropriate State agencies,] *appropriate State agencies,* and recognized national listing or accrediting bodies, and may consult with appropriate local agencies. Such conditions prescribed under any of such subsections may be varied for different areas or different classes of institutions or agencies and may, at the request of a State, provide higher requirements for such State than for other States; except that, in the case of any State or political subdivision of a State which imposes higher requirements on institutions as a condition to the purchase of services (or of certain specified services) in such institutions under a State plan approved under title I, XVI, or XIX, the Secretary shall impose like requirements as a condition to the payment for services (or for the services specified by the State or subdivision) in such institutions in such State or subdivision.

USE OF STATE AGENCIES TO DETERMINE COMPLIANCE BY PROVIDERS OF SERVICES WITH CONDITIONS OF PARTICIPATION

SEC. 1864. (a)

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(c) The Secretary is authorized to enter an agreement with any State under which the appropriate State or local agency which performs the certification function described in subsection (a) will survey, on a selective sample basis (or where the Secretary finds that a survey is appropriate because of substantial allegations of the existence of a significant deficiency or deficiencies which would, if found to be present, adversely affect health and safety of patients), hospitals which have an agreement with the Secretary under section 1866 and which are accredited by the Joint Commission on [the] Accreditation of Hospitals. The Secretary shall pay for such services in the manner prescribed in subsection (b).

EFFECT OF ACCREDITATION

SEC. 1865. (a) Except as provided in subsection (b) and the second sentence of section 1863, if—

(1) an institution is accredited as a hospital by the Joint Commission on Accreditation of Hospitals, and

(2) such institution (if it is included within a survey described in section 1864(c)) authorizes the Commission to release to the Secretary [on a confidential basis] upon his request (or such State agency as the Secretary may designate) a copy of the most current accreditation survey of such institution made by such Commission,

then, such institution shall be deemed to meet the requirements of the numbered paragraphs of section 1861(e); except—

(3) paragraph (6) thereof, and

(4) any standard, promulgated by the Secretary pursuant to paragraph (9) thereof, which is higher than the requirements prescribed for accreditation by such Commission.

If such Commission, as a condition for accreditation of a hospital, requires a utilization review plan (or imposes another requirement which serves substantially the same purpose) or imposes a standard which the Secretary determines is at least equivalent to the standard promulgated by the Secretary as described in paragraph (4) of this subsection, the Secretary is authorized to find that all institutions so accredited by such Secretary comply also with section 1861(e)(6) or the standard described in such paragraph (4), as the case may be. In addition, if the Secretary finds that accreditation of an [institution or agency] *entity* by the American Osteopathic Association or any other national accreditation body provides reasonable assurance that any or all of the conditions of [section 1861(e), (j), (o), or (dd);] *section 1832(a)(2)(F)(i), 1861(e), 1861(j), 1861(o), or 1861(p)(4)(A) or (B), paragraphs (11) and (12) of section 1861(s), or section 1861(aa)(2), 1861(cc)(2), or 1861(dd)(2),* hospital as the case may be, are met, he may, to the extent he deems it appropriate, treat such [institution or agency] *entity* as meeting the condition or conditions with respect to which he made such finding. *The Secretary may not disclose any accreditation survey made and released to him by the Joint Commission on Accreditation of Hospitals, the American Osteopathic Association, or any other national accreditation body, of an entity accredited by such body.*

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AGREEMENTS WITH PROVIDERS OF SERVICES

SEC. 1866. (a)(1) [Any provider] *subject to paragraph (4), any provider* of services (except a fund designated for purposes of section 1814(g) and section 1835(e)) shall be qualified to participate under this title and shall be eligible for payments under this title if it files with the Secretary an agreement—

(A) not to charge, except as provided in paragraph (2), any individual or any other person for items or services for which such individual is entitled to have payment made under this title (or for which he would be so entitled if such provider of services had complied with the procedural and other requirements under or pursuant to this title or for which such provider is paid pursuant to the provisions of section 1814(e)),

(B) not to charge any individual or any other person for items or services for which such individual is not entitled to have payment made under this title because payment for expenses incurred for such items or services may not be made by reason of the provisions of paragraph (1) or (9) of section 1862(a), but only if (i) such individual was without fault in incurring such expenses and (ii) the Secretary's determination that such payment may not be made for such items and services was made after the third year following the year in which notice of such payment was sent to such individual; except that the Secretary may reduce such three-year period to not less than one year if he finds such reduction is consistent with the objectives of this title,

(C) to make adequate provision for return (or other disposition, in accordance with regulations) of any moneys incorrectly collected from such individual or other person,

(D) to promptly notify the Secretary of its employment of an individual who, at any time during the year preceding such employment, was employed in a managerial, accounting, auditing, or similar capacity (as determined by the Secretary by regulation) by an agency or organization which serves as a fiscal intermediary or carrier (for purposes of part A or part B, or both, of this title) with respect to the provider,

(E) to release data with respect to patients of such provider upon request to an organization having a contract with the Secretary under part B of title XI as may be necessary (i) to allow such organization to carry out its functions under such contract, or (ii) to allow such organization to carry out similar review functions under any contract the organization may have with a private or public agency paying for health care in the same area with respect to patients who authorize release of such data for such [purposes] *purposes,*

(F) in the case of hospitals which provide inpatient hospital services for which payment may be made under subsection [(c) or (d)] (b), (c), or (d) of section 1886, to maintain an agreement with *a professional standards review organization (if there is such an organization in existence in the area in which the hospital is located as of July 1, 1983)* or a utilization and quality control peer review organization (if there is such an organization which has a contract with the Secretary under part B of title XI for the area in which the hospital is located) under which the organization will perform functions under that part with respect to the review of the validity of diagnostic information provided by such hospital, the completeness, adequacy, and quality of care provided, the appropriateness of admissions and discharges, and the appropriateness of care provided for which additional payments are sought under section 1886(d)(5), with respect to inpatient hospital services for which payment may be made under part A of this title (and for purposes of payment under this title, the cost of such agreement to the hospital shall be considered a cost incurred by such hospital in providing inpatient services under part A, and (i) shall be paid directly by the Secretary to such organization on behalf of such hospital in accordance with a rate per review established by the Secretary, (ii) shall be transferred from the Federal Hospital Insurance Trust Fund, without regard to amounts appropriated in advance in appropriation Acts, in the same manner as transfers are made for payment for services provided directly to beneficiaries, (iii) shall be not less than an amount which reflects the rates per review established in fiscal year 1982 for both direct and administrative costs (adjusted for inflation), and (iv) shall not be less in the aggregate for a fiscal year than the aggregate amount expended in fiscal year 1982 for direct and administrative costs (adjusted for inflation) of such reviews,

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(2)(A) A provider of services may charge such individual or other person (i) the amount of any deduction or coinsurance amount imposed pursuant to section 1813(a)(1), (a)(3), or (a)(4) section 1833(b), or section 1861(y)(3) with respect to such items and services (not in excess of the amount customarily charged for such items and services by such provider), and (ii) an amount equal to 20 per centum of the reasonable charges for such items and services (not in excess of 20 per centum of the amount customarily charged for such items and services by such provider) for which payment is made under part B (but in the case of items and services furnished to individuals with end-stage renal disease, an amount equal to 20 percent of the estimated amounts for such items and services calculated on the basis established by the Secretary). In the case of items and services described in section 1833(c), clause (ii) of the preceding sentence shall be applied by substituting for 20 percent the proportion which is appropriate under such section. A provider of services may not impose a charge under clause (ii) of the first sentence of this subparagraph with respect to items and services described in section 1861(s)(10) *and with respect to diagnostic laboratory tests* for which payment is made under part B.

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(4)(A) A hospital shall be qualified to participate under this title and shall be eligible for payments under this title only if it provides (in the agreement filed with the Secretary under paragraph (1)) that any physician who—

(i) is on the medical staff of the hospital (courtesy or otherwise) and

(ii) furnishes services to inpatients in the hospital,

must enter into an agreement described in subparagraph (B) in a manner established by the Secretary.

(B) A physician's agreement referred to in subparagraph (A) is an agreement by the physician not to impose any charge or receive payment for any services which are furnished to an inpatient in the hospital for which payment may be made under part B except on the basis of an assignment in section 1842(b)(3)(B)(ii) or under the procedure described in section 1870(f)(1).

(b) An agreement with the Secretary under this section may be terminated—

(1) by the provider of services at such time and upon such notice to the Secretary and the public as may be provided in regulations, except that notice of more than 6 months shall not be required, or

(2) by the Secretary at such time and upon such reasonable notice to the provider of services and the public as may be specified in regulations, but only after the Secretary has determined (A) that such provider of services is not complying substantially with the provisions of such agreement, or with the provisions of this title and regulations thereunder, or (B) that such provider of services no longer substantially meets the applicable provisions of section 1861, or (C) that such provider of services has failed (i) to provide such information as the Secretary finds necessary to determine whether payments are or were due under this title and the amounts thereof, or has refused to permit such examination of its final and other records by or on behalf of the Secretary as may be necessary to verify such information, or (ii) to supply (within such period as may be specified by the Secretary in regulations) upon request specifically addressed to such provider by the Secretary (I) full and complete information as to the ownership of a subcontractor (as defined by the Secretary in regulations) with whom such provider has had, during the previous twelve months, business transactions in an aggregate amount in excess of $25,000, and (II) full and complete information as to any significant business transactions (as defined by the Secretary in regulations), occurring during the five-year period ending on the date of such request, between such provider and any wholly owned supplier or between such provider and any subcontractor, or (D) that such provider has made or caused to be made, any false statement or representation of a material fact for use in an application for payment under this title or for use in determining the right to a payment under this title or (E) that such provider has submitted, or caused to be submitted, requests for payment under this title of amounts for rendering services substantially in excess of the costs incurred by such provider for rendering such services, or (F) that such provider has furnished services or supplies which are determined by the Secretary to be substantially in excess of the needs of individuals or to be of a quality which fails to meet professionally recognized standards of health care, or (G) that such provider (at the time the agreement was entered into) did not fully and accurately make any disclosure required of it by section 1126(a), *or that any person who has a direct or indirect ownership or control interest of 5 percent of more in such provider, or who is an officer, director, agent, or managing employee (as defined in section 1126(b)) of such provider, is a person described in section 1126(a)(2), or (H) that such provider (in the case of a hospital) is not complying with the provisions of the agreement specified in subsection (a)(4).*

[THE INDENTATIONS OF THE FOLLOWING PARAGRAPHS ARE REALIGNED BY THE BILL TO CONFORM TO THE PRECEDING PARAGRAPH]

Any termination shall be applicable—

(3) in the case of inpatient hospital services (including [tuberculosis hospital services and] inpatient psychiatric hospital

services) or post-hospital extended care services, with respect to services furnished after the effective date of such termination, except that payment may be made for up to thirty days with respect to inpatient insitutional services furnished to any eligible individual who was admitted to such institution prior to the effective date of such termination.

(4)(A) with respect to home health services or hospice care furnished to an individual under a plan therefor established on or after the effective date of such termination, or (B) if a plan is established before such effective date, with respect to such services furnished to such individual after [the calendar year in which] *30 days after* such termination is effective; and

(5) with respect to any other items and services furnished on or after the effective date of such termination.

* * * * * * *

(d) If the Secretary finds that there is a substantial failure to make timely review in accordance with section 1861(k) of long-stay cases in a hospital or skilled nursing facility, he may, in lieu of terminating his agreement with such hospital or facility, decide that, with respect to any individual admitted to such hospital or facility after a subsequent date specified by him, no payment shall be made under this title for inpatient hospital services (including [inpatient tuberculosis hospital services and] inpatient psychiatric hospital services) after the 20th day of a continuous period of such services or for post-hospital extended care services after such day of a continuous period of such care as is prescribed in or pursuant to regulations, as the case may be. Such decision may be made effective only after such notice to the hospital, or (in the case of a skilled nursing facility) to the facility and the hospital or hospitals with which it has a transfer agreement, and to the public, as may be prescribed by regulations, and its effectiveness shall terminate when the Secretary finds that the reason therefor has been removed and that there is reasonable assurance that it will not recur. The Secretary shall not make any such decision except after reasonable notice and opportunity for hearing to the institution or agency affected thereby.

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(g)(1) The Secretary shall, through the Commissioner of the Food and Drug Administration, provide for a registry of all cardiac pacemaker devices and pacemaker leads for which payment was made under this title. Such registry shall include the manufacturer, model, serial number, and manufacturer's price of each such device or lead, the name of the recipient of such device or lead, the date and location of the implantation or removal of the device or lead, the name of the physician involved in implanting or removing such device or lead, the name of the hospital or other provider billing of such procedure, any express or implied warranties associated with such device or lead under contract or State law, and such other information as the Secretary deems to be appropriate, Such registry shall be for the purposes of assisting the Secretary in determining when payments may properly be made under this title, determining when inspection by the Food and Drug Administration may be nec-

essary under paragraph (2), and casrrying out studies with respect to the use of such devices and leads. In carrying out any such study, the Secretary may not reveal any specific information which identifies any pacemaker device or lead recipient by name (or which would otherwise identify a specific recipient). Any person or organization may provide information to the registry with respect to cardiac pacemaker devices and leads other than those for which payment is made under this title.

(2) In any case where the Secretary has reason to believe, based upon information in the pacemaker registry or otherwise available to him, that replacement of a cardiac pacemaker device or lead for which payment is or may be requested under this title is related to the malfunction of a device or lead, the Secretary may require that personnel of the Food and Drug Administration test such device, or be present at the testing of such device by the manufacturer, to determine whether such device was functioning properly.

HEALTH INSURANCE BENEFITS ADVISORY COUNCIL

[SEC. 1867. (a) There is hereby created a Health Insurance Benefits Advisory Council which shall consist of 19 persons, not otherwise in the employ of the United States, appointed by the Secretary without regard to the provisions of title 5, United States Code, governing appointments in the competitive services. The Secretary shall from time to time appoint one of the members to serve as Chairman. The members shall include persons who are outstanding in fields related to hospital, medical, and other health activities, persons who are representative of organizations and associations of professional personnel in the field of medicine, and at least one person who is representative of the general public. Each member shall hold office for a term of four years, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term. A member shall not be eligible to serve continuously for more than two terms. Members of the Advisory Council, while attending meetings or conferences thereof or otherwise serving on business of the Advisory Council, shall be entitled to receive compensation at rates fixed by the Secretary, but not exceeding $100 per day, including traveltime, and while so serving away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently. The Advisory Council shall meet as the Secretary deems necessary, but not less than annually.

[(b) It shall be the function of the Advisory Council to provide advice and recommendations for the consideration of the Secretary on matters of general policy with respect to this title and title XIX.]

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DETERMINATIONS; APPEALS

SEC. 1869. (a) The determination of whether an individual is entitled to benefits under part A or part B, and the determination of the amount of benefits under part A, shall be made by the Secretary in accordance with regulations prescribed by him.

(b)(1) Any individual dissatisfied with any determination under subsection (a) as to—

(A) whether he meets the conditions of section 226 of this Act or section 103 of the Social Security Amendments of 1965, or

(B) whether he is eligible to enroll and has enrolled pursuant to the provisions of part B of this title [or section 1818, or section 1819] *or section 1818,* or

(C) the amount of benefits under part A (including a determination where such amount is determined to be zero)

shall be entitled to a hearing thereon by the Secretary to the same extent as is provided in section 205(b) and to judicial review of the Secretary's final decision after such hearing as is provided in section 205(g).

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APPLICATION OF CERTAIN PROVISIONS OF TITLE II

SEC. 1872. The provisions of sections [206,] *206* and 216(j), and of subsections (a), (d), (e), [(f),] (h), (i), (j), (k), and (l) of section 205 shall also apply with respect to this title to the same extent as they are applicable with respect to title II.

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STUDIES AND RECOMMENDATIONS

SEC. 1875. (a) The Secretary shall carry on studies and develop recommendations to be submitted from time to time to the Congress relating to health care of the aged and disabled, including studies and recommendations concerning (1) the adequacy of existing personnel and facilities for health care for purposes of the programs under parts A and B; (2) methods for encouraging the further development of efficient and economical forms of health care which are a constructive alternative to inpatient hospital care; and (3) the effects of the deductibles and coinsurance provisions upon beneficiaries, persons who provide health services, and the financing of the program.

(b) The Secretary shall make a continuing study of the operation and administration of the insurance programs under parts A and B (including a validation of the accreditation process of the Joint Commission on [the] Accreditation of Hospitals, the operation and administration of health maintenance organizations authorized by section 226 of the Social Security Amendments of 1972, the experiments and demonstration projects authorized by section 402 of the Social Security Amendments of 1967, and the experiments and demonstration projects authorized by section 222(a) of the Social Security Amendments of 1972), and shall transmit to the Congress annually a report concerning the operation of such programs.

PAYMENTS TO HEALTH MAINTENANCE ORGANIZATIONS AND COMPETITIVE MEDICAL PLANS

Sec. 1876. (a)(1)(A)* * *

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(b) For purposes of this section, the term "eligible organization" means a public or private entity (which may be a health maintenance organization or a competitive medical plan), organized under the laws of any State, which—

(1) is a qualified health maintenance organization (as defined in section 1310(d) of the Public Health Service Act), or

(2) meets the fllowing requirements:

(A) The entity provides to enrolled members at least the following health care services:

(i) Physicians' services performed by phsicians (as defined in section 1861(r)(1)).

(ii) Inpatient hosptial services.

(iii) Laboratory, X-ray, emergency, and preventative services.

(iv) Out-of-area coverage.

(B) The entity is compensated (except for deductibles, coinsurance, and copayments) for the provision of health care services to enrolled members by a payment which is paid on a periodic basis without regard to the date the health care services are provided and which is fixed without regard to the frequency, extent, or kind of health care service actually provided to a member.

(C) The entity provides physicians' services primary (i) directly through physicians who are either employees or partners of such organizations, or (ii) through contracts with individual physicians or one or more groups of physicians (organized on a group practice or individual practice basis).

(D) The entity assumes full financial risk on a prospective basis for the provisions of the health care services listed in [paragraph (1)] *subparagraph (A)*, except that such entity may—

(1) obtain insurance or make other arangements for the cost of providing to any enrolled member health care services listed in subparagraph (A) the aggregate value of which exceeds $5,000 in any year,

(ii) obtain insurance or make other arrangements for the costs of health care services listed in subparagraph (A) provided to its enrolled members other than through the entity because medical necessity required their provision before they could be secured through the entity,

(iii) obtain insurance or make other arrangements for not more than 90 percent of the amount by which its costs for any of its fiscal years exceed 115 percent of its income for such fiscal year, and

(iv) make arrangements with physicians or other health professionals, health care institutions, or any combination of such individuals or institutions to assume all or part of the financial risk on a prospective basis for the provision of basic health services by the physicians or other health professionals or through the institutions.

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(c)(1) The Secretary may not enter into a contract under this section with an eligible organization unless it meets the requirements of this subsection (e) with respect to members enrolled under this section.

(2) The organization must provide to members enrolled under this section, through providers and other persons that meet the applicable requirements of this title and part A of title XI—

(A) Only those services covered under parts A and B of this title, for those members entitled to benefits under part A and enrolled under part B, or

(B) only those services covered under part B, for those members enrolled only under such part,

which are available to individuals residing in the geographic area served by the organization, except that (i) the organization may provide such members with such additional health care services as the members may elect, at their option, to have covered, and (ii) in the case of an organization with a risk-sharing contract, the organization may provide such members with such additional health care services as the Secretary may approve. The Secretary shall approve any such additional health care services which the organization proposes to offer to such members, unless the Secretary determines that including such additional services will substantially discourage enrollment by covered individuals with the organization.

(3)(A) *(i)* Each eligible organization must have an open enrollment period, for the enrollment of individuals under this section, of at least 30 days duration every year *and including the 30-day period specified under clause (ii),* and must provide that at any time during which enrollments are accepted, the organization will accept up to the limits of its capacity (as determined by the Secretary) and without restrictions, except as may be authorized in regulations, individuals who are eligible to enroll under subsection (d) in the order in which they apply for enrollment, unless to do so would result in failure to meet the requirements of subsection (f) or would result in the enrollment of enrollees substantially nonrepresentative, as determined in accordance with regulations of the Secretary, of the population in the geographic area served by the organization.

(ii) For each area served by more than one eligible organization under this section, the Secretary (after consultation with such organizations) shall establish a single 30-day period each year during which all eligible organizations serving the area must provide for open enrollment under this section. The Secretary shall determine annual per capita rates under subsection (a)(1)(A) in a manner that assures that individuals enrolling during such a 30-day period will not have premium charges increased or any additional benefits decreased during the 12-month enrollment period for which the individual is enrolling. An eligible organization may provide for such

other open enrollment period or periods as it deems appropriate consistent with this section.

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PROVIDER REIMBURSEMENT REVIEW BOARD

SEC. 1878. (a) * * *

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(c) At such hearing, the provider of services shall have the right to be represented by counsel, to introduce evidence, and to examine and cross-examine witnesses. Evidence may be received at any such hearing even though **[**inadmissable**]** *inadmissible* under rules of evidence applicable to court procedure.

(d) A decision by the Board shall be based upon the record made at such hearing, which shall include the evidence considered by the intermediary and such other evidence as may be obtained or received by the Board, and shall be supported by substantial evidence when the record is viewed as a whole. The Board shall have the power to affirm, modify, or reverse a final determination of the fiscal intermediary with respect to a cost report and to make any other revisions on matters covered by such cost report (including revisions adverse to the provider of services) even though such matters were not considered by the intermediary in making such final determination.

(e) The Board shall have full power and authority to make rules and establish procedures, not inconsistent with the provisions of this title or regulations of the Secretary, which are necessary or appropriate to carry out the provisions of this section. In the course of any hearing the Board may administer oaths and affirmations. The provisions of subsections (d), (e), and **[**(f),**]** of section 205 with respect to subpenas shall apply to the Board to the same extent as they apply to the Secretary with respect to title II.

(f)(1) A decision of the Board shall be final unless the Secretary, on his own motion, and within 60 days after the provider of services is notified of the Board's decision, reverses, affirms, or modifies the Board's decision. Providers shall have the right to obtain judicial review of any final decision of the Board, or of any reversal, affirmance, or modification by the Secretary, by a civil action commenced within 60 days of the date on which notice of any final decision by the Board or of any reversal, affirmance, or modification by the Secretary is received. Providers shall also have the right to obtain judicial review of any action of the fiscal intermediary which involves a question of law or regulations relevant to the matters in controversy whenever the Board determines (on its own motion or at the request of a provider of services as described in the following sentence) that it is without authority to decide the question, by a civil action commenced within sixty days of the date on which such determination is rendered. If a provider of services may obtain a hearing under subsection (a) and has filed a request for such a hearing, such provider may file a request for a determination by the Board of its authority to decide the question of law or regulations relevant to the matters in controversy (accompanied by such documents and materials as the Board shall require for purposes of rendering such determination). The Board shall render such determination in writing within thirty days after the Board receives the request and such accompanying documents and materials, and the determination shall be considered a final decision and not subject to review by the Secretary. If the Board fails to render such determination within such period, the provider may bring a civil action (within sixty days of the end of such period) with respect to the matter in controversy contained in such request for a hearing. Such action shall be brought in the district court of the United States for the judicial district in which the provider is located (or, in an action brought jointly by several providers, the judicial district in which the greatest number of such providers are located) or in the District Court for the District of Columbia and shall be tried pursuant to the applicable provisions under chapter 7 of title 5, United States Code, notwithstanding any other provisions in section 205. Any appeal to the Board or action for judicial review by providers which are under common ownership or control *or which have obtained a hearing under subsection (b)* must be brought buy such providers as a group with respect to any matter involving an issue common to such providers.

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MEDICARE COVERAGE FOR END STAGE RENAL DISEASE PATIENTS

SEC. 1881. (a) The benefits provided by parts A and B of this title shall include benefits for individuals who have been determined to have [end-stage] *end stage* renal disease as provided in section 226A, and benefits for kidney donors as provided in subsection (d) of this section. Notwithstanding any other provision of this title, the type, duration, and scope of the benefit provided by parts A and B with respect to individuals who have been determined to have [end-stage] *end stage* renal disease and who are entitled to such benefits without regard to section 226A shall in no case be less than the type, duration, and scope of the benefits so provided for individuals entitled to such benefits solely by reason of that section.

(b)(1) Payments under this title with respect to services, in addition to services for which payment would otherwise be made under this title, furnished to individuals who have been determined to have [end-stage] *end stage* renal disease shall include (A) payments on behalf of such individuals to providers of services and renal dialysis facilities which meet such requirements as the Secretary shall by regulation prescribe for institutional dialysis services and supplies (including self-dialysis services in a self-care dialysis unit maintained by the provider or facility), transplantation services, self-care home dialysis support services which are furnished by the provider or facility, and routine professional services performed by a physician during a maintenance dialysis episode if payments for his other professional services furnished to an individual who has [end-stage] *end stage* renal disease are made on the basis specified in paragraph (3)(A) of this subsection, and (B) payments to or on behalf of such individuals for home dialysis supplies and equipment. The requirements prescribed by the Secretary under subparagraph (A) shall include requirements for a minimum utilization rate for covered procedures and for self-dialysis training programs.

(2)(A) With respect to payments for dialysis services furnished by providers of services and renal dialysis facilities to individuals determined to have [end-stage] *end stage* renal disease for which payments may be made under part B of this title, such payments (unless otherwise provided in this section) shall be equal to 80 percent of the amounts determined in accordance with subparagraph (B); and with respect to payments for services for which payments may be made part A of this title, the amounts of such payments (which amounts shall not exceed, in respect to costs in procuring organs attributable to payments made to an organ procurement agency or histocompatibility laboratory, the costs incurred by that agency or laboratory) shall be determined in accordance with section 1861(v) or section 1886 (if applicable. Payments shall be made to a renal dialysis facility only if it agrees to accept such payments as payment in full for covered services, except for payment by the individual of 20 percent of the estimated amounts for such services calculated on the basis established by the Secretary under subparagraph (B) and the deductible amount imposed by section 1833(b).

(B) The Secretary shall prescribe in regulations any methods and procedures to (i) determine the costs incurred by providers of services and renal dialysis facilities in furnishing covered services to individuals determined to have [end-stage] *end stage* renal disease, and (ii) determine, on a cost-related basis or other economical and equitable basis (including any basis authorized under section 1861(v)) and consistent with any regulations promulgated under paragraph (7), the amounts of payments to be made for part B services furnished by such providers and facilities to such individuals.

(C) Such regulations, in the case of services furnished by proprietary providers and facilities may include, if the Secretary finds it feasible and appropriate, provision for recognition of a reasonable rate of return on equity capital, providing such rate of return does not exceed the rate of return stipulated in section 1861(v)(1)(B).

(D) For purposes of section 1878, a renal dialysis facility shall be treated as a provider of services.

(3) With respect to payments for physicians' services furnished to individuals determined to have [end-stage] *end stage* renal disease, the Secretary shall pay 80 percent of the amounts calculated for such services—

(A) on a reasonable charge basis (but may, in such case, make payment on the basis of the prevailing charges of other physicians for comparable services) except that payment may not be made under this subparagraph for routine services furnished during a maintenance dialysis episode, or

(B) on a comprehensive monthly fee or other basis (which effectively encourages the efficient delivery of dialysis services and provides incentives for the increased use of home dialysis) for an aggregate of services provided over a period of time (as defined in regulations).

(4) Pursuant to agreements with approved providers of services and renal dialysis facilities, the Secretary may make payments to such providers and facilities for the cost of home dialysis supplies and equipment and self-care home dialysis support services fur-

nished to patients whose self-care home dialysis is under the direct supervision of such provider or facility, on the basis of a target reimbursement rate (as defined in paragraph (6)) or on the basis of a method established under paragraph (7).

(5) An agreement under paragraph (4) shall require, in accordance with regulations prescribed by the Secretary, that the provider or facility will—

(A) assume full responsibility for directly obtaining or arranging for the provision of—

(i) such medically necessary dialysis equipment as is prescribed by the attending physican;

(ii) dialysis equipment maintenance and repair services;

(iii) the purchase and delivery of all necessary medical supplies; and

(iv) where necessary, the services of trained home dialysis aides;

(B) perform all such administrative functions and maintain such information and records as the Secretary may require to verify the transactions and arrangements described in subparagraph (A);

(C) submit such cost reports, data, and information as the Secretary may require with respect to the costs incurred for equipment, supplies, and services furnished to the facility's home dialysis patient population; and

(D) provide for full access for the Secretary to all such records, data, and information as he may require to perform his functions under this section.

(6) The Secretary shall establish, for each calendar year, commencing with January 1, 1979, a target reimbursement rate for home dialysis which shall be adjusted for regional variations in the cost of providing home dialysis. In establishing such a rate, the Secretary shall include—

(A) the Secretary's estimate of the cost of providing medically necessary home dialysis supplies and equipment;

(B) an allowance, in an amount determined by the Secretary, to cover the cost of providing personnel to aid in home dialysis; and

(C) an allowance, in an amount determined by the Secretary, to cover administrative costs and to provide an incentive for the efficient delivery of home dialysis;

but in no event (except as may be provided in regulations under paragraph (7)) shall such target rate exceed 75 percent of the national average payment, adjusted for regional variations, for maintenance dialysis services furnished in approved providers and facilities during the preceding fiscal year. Any such target rate so established shall be utilized, without renegotiation of the rate, throughout the calendar year for which it is established. During the last quarter of each calendar year, the Secretary shall establish a home dialysis target reimbursement rate for the next calendar year based on the most recent data available to the Secretary at the time. In establishing any rate under this paragraph, the Secretary may utilize a competitive-bid procedure, a prenegotiated rate procedure, or any other procedure (including methods established under paragraph 7) which the Secretary determines is appropriate and feasible in order to carry out this paragraph in an effective and efficient manner.

(7) The Secretary shall provide by regulation for a method (or methods) for determining prospectively the amounts of payments to be made for dialysis services furnished by providers of services and renal dialysis facilities to individuals in a facility and to such individuals at home. Such method (or methods) shall provide for the prospective determination of a rate (or rates) for each mode of care based on a single composite weighted formula (which takes into account the mix of patients who receive dialysis services at a facility or at home and the relative costs of providing such services in such settings) for hospital-based facilities and such a single composite weighted formula for other renal dialysis facilities, or based on such other method or combination of methods which differentiate between hospital-based facilities and other renal dialysis facilities and which the Secretary determines, after detailed analysis, will more effectively encourage the more efficient delivery of dialysis services and will provide greater incentives for increased use of home dialysis than through the single composite weighted formulas. The Secretary shall provide for such exceptions to such methods as may be warranted by unusual circumstances (including the special circumstances of sole facilities located in isolated, rural areas). The Secretary may provide that such method will serve in lieu of any target reimbursement rate that would be established under paragraph (6).

(8) For purposes of this title, the term "home dialysis supplies and equipment" means medically necessary supplies and equipment (including supportive equipment) required by an individual suffering from **[**end-stage**]** *end stage* renal disease in connection with renal dialysis carried out in his home (as defined in regulations), in including obtaining installing, and maintaining such equipment.

(9) For purposes of title, the term "self-care home dialysis support services", to the extent permitted in regulation, means—

(A) periodic monitoring of the patient's home adaptation, including visits by qualified provider or facility personnel (as defined in regulations), so long as this is done in accordance with a plan prepared and periodically reviewed by a professional team (as defined in regulations) including the individual's physician;

(B) installation and maintenance of dialysis equipment;

(C) testing and appropriate treatment of the water; and

(D) such additional supportive services as the Secretary finds appropriate and desirable.

(10) For purposes of this title, the term "self-care dialysis unit" means a renal dialysis facility or a distinct part of such facility or of a provider of services, which has been approved by the Secretary to make self-dialysis services, as defined by the Secretary in regulations, available to individuals who have been trained for self-dialysis. A self-care dialysis unit must, at a minimum, furnish the services, equipment and supplies needed for self-care dialysis, have patient-staff ratios which are appropriate to self-dialysis (allowing for such appropriate lesser degree of ongoing medical supervision and assistance of ancillary personnel than is required for full care

maintenance of dialysis), and meet such other requirements as the Secretary may prescribe with respect to the quality and cost-effectiveness of services.

(c)(1)(A) For the purpose of assuring effective and efficient administration of the benefits provided under this section, the Secretary shall establish, in accordance with such criteria as he finds appropriate, renal disease network areas, such network organizations (including a coordinating council, an executive committee of such council, and a medical review board, for each network area) as he finds necessary to accomplish such purpose, and a national end stage renal disease medical information system. The Secretary may by regulations provide for such coordination of network planning and quality assurance activities and such exchange of data and information among agencies with responsibilities for health planning and quality assurance activities under Federal law as is consistent with the economical and efficient administration of this section and with the responsibilities established for network organizations under this section.

(B) At least one patient representative shall serve as a member of each coordinating council and executive committee.

(C) The Secretary shall, in regulations, prescribe requirements with respect to membership in network organizations by individuals (and the relatives of such individuals) (i) who have an ownership or control interest in a facility or provider which furnishes services referred to in section 1861(s)(2)(F), or (ii) who have received remuneration from any such facility or provider in excess of such amounts as constitute reasonable compensation for services (including time and effort relative to the provision of professional medical services) or goods supplied to such facility or provider; and such requirements shall provide for the definition, disclosure, and, to the maximum extent consistent with effective administration, prevention of potential or actual financial or professional conflicts of interest with respect to decisions concerning the appropriateness, nature, or site of patient care.

(2) The network organizations of each network shall be responsible, in addition to such other duties and functions as may be prescribed by the Secretary, for—

(A) encouraging, consistent with sound medical practice, the use of those treatment settings most compatible with the successful rehabilitation of the patient;

(B) developing criteria and standards relating to the quality and appropriateness of patient care; and network goals with respect to the placement of patients in self-care settings and undergoing or preparing for transplantation;

(C) evaluating the procedure by which faciities and providers in the network assess the appropriateness of patients for proposed treatment modalities;

(D) identifying facilities and providers that are not cooperating toward meeting network goals and assisting such facilities and providers in developing appropriate plans for correction; and

(E) submitting an annual report to the Secretary on July 1 of each year which shall include a full statement of the network's goals, data on the network's performance in meeting its goals (including data on the comparative performance of facilities and providers with respect to the identification and placement of suitable candidates in self-care settings and transplantation), identification of those facilities that have consistently failed to cooperate with network goals, and recommendations with respect to the need for additional or alternative services or facilities in the network in order to meet the network goals, including self-dialysis training, transplantation, and organ procurement facilities.

(3) Where the Secretary determines, on the basis of the data contained in the network's annual report and such other relevant data as may be available to him, that a facility or provider has consistently failed to cooperate with network plans and goals, he may terminate or withhold certification of such facility or provider (for purposes of payment for services furnished to individuals with end stage renal disease) until he determines that such provider or facility is making reasonable and appropriate efforts to cooperate with the network's plans and goals. *Where the Secretary also determines that the facility's or provider's failure to cooperate with the Secretary's plans and goals does not jeopardize patient health or safety or justify termination of certification, the Secretary may, instead of terminating or withholding certification and after reasonable notice to the provider or facility and to the public, impose such other sanctions as may be appropriate, which sanctions may include denial of reimbursement with respect to some or all patients admitted to the facility after the date of the notice and graduated reduction in reimbursement for all patients.*

(4) The Secretary shall, in determining whether to certify additional facilities or expansion of existing facilities within a network, take into account the network's goals and performance as reflected in the network's annual report.

(5) The Secretary, after consultation with appropriate professional and planning organizations, shall provide such guidelines with respect to the planning and delivery of renal disease services as are necessary to assist network organizations in their development of their respective networks' goals to promote the optimum use of self-dialysis and transplantation by suitable candidates for such modalities.

(6) It is the intent of the Congress that the maximum practical number of patients who are medically, socially, and psychologically suitable candidates for home dialysis or transplantation should be so treated. The Secretary shall consult with appropriate professional and network organizations and consider available evidence relating to developments in research, treatment methods, and technology for home dialysis and transplantation. The Secretary shall periodically submit to the Congress such legislative recommendations as the Secretary finds warranted on the basis of such consultation and evidence to further the national objective of maximizing the use of home dialysis and transplantation consistent with good medical practice.

(d) Notwithstanding any provision to the contrary in section 226 any individual who donates a kidney for transplant surgery shall be entitled to benefits under part A and B of this title with respect to such donation. Reimbursement for the reasonable expenses incurred by such an individual with respect to a kidney donation shall be made (without regard to the deductible, premium, and coinsurance provisions of this title), in such manner as may be prescribed by the Secretary in regulations, for all reasonable preparatory, operation, and postoperation recovery expenses associated with such donation, including but not limited to the expenses for which payment could be made if he were an eligible individual for purposes of parts A and B of this title without regard to this subsection. Payments for postoperation recovery expenses shall be limited to the actual period of recovery.

(e)(1) Notwithstanding any other provision of this title, the Secretary may, pursuant to agreements with approved providers of services, renal dialysis facilities, and nonprofit entities which the Secretary finds can furnish equipment economically and efficiently, reimburse such providers, facilities, and nonprofit entities (without regard to the deductible and coinsurance provisions of this title) for the reasonable cost of the purchase, installation, maintenance and reconditioning for subsequent use of artificial kidney and automated dialysis peritoneal machines (including supportive equipment) which are to be used exclusively by entitled individuals dialyzing at home.

(2) An agreement under this subsection shall require that the provider, facility, or other entity will—

(A) make the equipment available for use only by entitled individuals dialyzing at home;

(B) recondition the equipment, as needed, for reuse by such individuals throughout the useful life of the equipment, including modification of the equipment consistent with advances in research and technology;

(C) provide for full access for the Secretary to all records and information relating to the purchase, maintenance, and use of the equipment; and

(D) submit such reports, data, and information as the Secretary may require with respect to the cost, management, and use of the equipment.

(3) For purposes of this section, the term "supportive equipment" includes blood pumps, heparin pumps, bubble detectors, other alarm systems, and such other items as the Secretary may determine are medically necessary.

(f)(1) The Secretary shall initiate and carry out, at selected locations in the United States, pilot projects under which financial assistance in the purchase of new or used durable medical equipment for renal dialysis is provided to individuals suffering from end stage renal disease at the time home dialysis is begun, with provision for a trial period to assure successful adaptation to home dialysis before the actual purchase of such equipment.

(2) The Secretary shall conduct experiments to evaluate methods for reducing the costs of the end stage renal disease program. Such experiments shall include (without being limited to) reimbursement for nurses and dialysis technicians to assist with home dialysis, and reimbursement to family members assisting with home dialysis.

(3) The Secretary shall conduct experiments to evaluate methods of dietary control for reducing the costs of the end stage renal disease program, including (without being limited to) the use of pro-

tein-controlled products to delay the necessity for, or reduce the frequency of, dialysis in the treatment of end stage renal disease.

(4) The Secretary shall conduct a comprehensive study of methods for increasing public participation in kidney donation and other organ donation programs.

(5) The Secretary shall conduct a full and complete study of the reimbursement of physicians for services furnished to patients with end stage renal disease under this title, giving particular attention to the range of payments to physicians for such services, the average amounts of such payments, and the number of hours devoted to furnishing such services to patients at home, in renal disease facilities, in hospitals, and elsewhere.

(6) The Secretary shall conduct a study of the number of patients with end stage renal disease who are not eligible for benefits with respect to such disease under this title (by reason of this section or otherwise), and of the economic impact of such noneligibility of such individuals. Such study shall include consideration of mechanisms whereby governmental and other health plans might be instituted or modified to permit the purchase of actuarially sound coverage for the costs of end stage renal disease.

(7) The Secretary shall conduct a study of the medical appropriateness and safety of cleaning and reusing dialysis filters by home dialysis patients. In such cases in which the Secretary determines that such home cleaning and reuse of filters is a medically sound procedure, the Secretary shall conduct experiments to evaluate such home cleaning and reuse as a method of reducing the costs of the end stage renal disease program.

(8) The Secretary shall submit to the Congress no later than October 1, 1979, a full report on the experiments conducted under paragraphs (1), (2), (3), and (7), and the studies under paragraphs (4), (5), (6), and (7). Such report shall include any recommendations for legislative changes which the Secretary finds necessary or desirable as a result of such experiments and studies.

(g) The Secretary shall submit to the Congress on July 1, 1979, and July 1 of each year thereafter a report on the end stage renal disease program, including but not limited to—

(1) the number of patients, nationally and by renal disease network, on dialysis (self-dialysis or otherwise) at home and in facilities;

(2) the number of new patients entering dialysis at home and in facilities during the year;

(3) the number of facilities providing dialysis and the utilization rates of those facilities;

(4) the number of kidney transplants, by source of donor organ;

(5) the number of patients awaiting organs for transplant;

(6) the number of transplant failures;

(7) the range of costs of kidney acquisitions, by type of facility and by region;

(8) the number of facilities providing transplants and the number of transplants performed per facility;

(9) patient mortality and morbidity rates;

(10) the average annual cost of hospitalization for ancillary problems in dialysis and transplant patients, and drug costs for transplant patients;

(11) medicare payment rates for dialysis, transplant procedures, and physician services, along with any changes in such rates during the year and the reasons for those changes;

(12) the results of cost-saving experiments;

(13) the results of basic kidney disease research conducted by the Federal Government, private institutions, and foreign governments;

(14) information on the activities of medical review boards and other networks organizations; and

(15) estimated program costs over the next five years.

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PAYMENT TO HOSPITALS FOR INPATIENT HOSPITAL SERVICE

SEC. 1886. (a) (1) (A) (i) * * *

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(2) The Secretary shall provide for such exemptions from, and exceptions and adjustments to, the limitation under paragraph (1)(A) as he deems appropriate, including those which he deems necessary to take into account—

(A) the special needs of sole community hospitals, of new hospitals, of risk based health maintenance organizations, and of hospitals which provide atypical services or essential community services, and to take into account extraordinary circumstances beyond the hospital's control, medical and paramedical education costs, significantly fluctuating population in the service area of the hospital, and unusual labor costs,

(B) the special needs of psychiatric hospitals and of public or other hospitals that serve a significantly [disportionate] *disproportionate* number of patients who have low income or are entitled to benefits under part A of this title, and

(C) a decrease in the inpatient hospital services that a hospital provides and that are customarily provided directly by similar hospitals which results in a significant distortion in the operating costs of inpatient hospital services.

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(4) For purposes of this section, the term "operating costs of inpatient hospital services" includes all routine operating costs, ancillary service operating costs, and special care unit operating costs with respect to inpatient hospital services as such costs are determined on an average per admission or per discharge basis (as determined by the Secretary). Such term does not include costs of approved educational activities, or, with respect to costs incurred in cost reporting periods beginning prior to October 1, 1986, capital-related costs *and costs related to employment or contracts for the professional services of certified registered nurse anesthetists,* as defined by the Secretary.

(b)(1) * * *

* * * * * * *

(3)(A) For purposes of this subsection, the term "target amount" means, with respect to a hospital for a particular 12-month cost reporting period—

(i) in the case of the first such reporting period for which this subsection is in effect, the allowable operating costs of inpatient hospital services (as defined in subsection (a)(4)) recognized under this title for such hospital for the preceding 12-month cost reporting period, and

(ii) in the case *of* a later reporting period, the target amount for the preceding 12-month cost reporting period,

increased by the applicable percentage increase under subparagraph (B) for that particular cost reporting period.

* * * * * * *

(c)(1) * * *

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(4) The Secretary shall approve the request of a State under paragraph (1) with respect to a hospital reimbursement control system if—

(A) the requirements of subparagraphs (A), (B), (C), [and (D)] *(D) and (E)* of paragraph (1) have been met with respect to the system, and

(B) with respect to that system a waiver of certain requirements of title XVIII of the Social Security Act has been approved on or before (and which is in effect as of) the date of the enactment of the Social Security Amendments of 1983, pursuant to section 402(a) of the Social Security Amendments of 1967 or section 222(a) of the Social Security Amendments of 1972.

With respect to a State system described in this paragraph, the Secretary shall judge the effectiveness of such system on the basis of its rate of increase or inflation in inpatient hospital payments for individuals under this title, as compared to the national rate of increase or inflation for such payments, with the State retaining the option to have the test applied on the basis of the aggregate payment or payments per inpatient admission or discharge during the three cost reporting periods beginning on or after October 1, 1983, after which such test, at the option of the Secretary, shall no longer apply, and such State systems shall be treated in the same manner as under other waivers.

* * * * * * *

(d)(1)(A) Notwithstanding section 1814(b) but subject to the provisions of section 1813, the amount of the payment with respect to the operating costs of inpatient hospital services (as defined in subsection (a)(4)) of a subsection (d) hospital (as defined in subpargraph (B)) for inpatient hospital discharges in a cost reporting period or in a fiscal year—

(i) beginning on or after October 1, 1983, and before October 1,1984, is equal to the sum of—

(I) the target percentage (as defined in subparagraph (C)) of the hospital's target amount for the cost reporting period (as defined in subsection (b)(3)(A), but determined without the application of subsection (a)), and

(II) the DRG percentage (as defined in subparagraph (C)) of the regional adjusted DRG prospective payment rate determined under paragraph (2) for such discharges;

(ii) beginning on or after October 1, 1984, and before October 1, 1986, is equal to the sum of—

(I) the target percentage (as defined in subparagraph (C)) of the hospital's target amount for the cost reporting period (as defined in subsection (b)(3)(A), but determined without the application of subsection (a)), and

(II) the DRG percentage (as defined in subparagraph (C)) of the applicable combined adjusted DRG prospective payment rate determined under subparagraph (D) for such discharges; or

(iii) beginning on or after October 1, 1986, is equal to the national adjusted DRG prospective payment rate determined under paragraph (3) for such discharges.

(B) As used in this section, the term "subsection (d) hospital" means a hospital located in one of the fifty States or the District of Columbia other than—

(i) a psychiatric hospital (as defined in section 1861(f)),

(ii) a rehabilitation hospital (as defined by the Secretary),

(iii) a hospital whose inpatients are predominantly individuals under 18 years of age, or

(iv) a hospital which has an average inpatient length of stay (as determined by the Secretary) of greater than 25 days;

and, in accordance with regulations of the Secretary, does not include a psychiatric or rehabilitation unit of the hospital which is a distinct part of the hospital (as defined by the Secretary).

(C) For purpose of this subsection, for cost reporting periods beginning[, or discharges occurring]—

(i) on or after October 1, 1983, and before October 1, 1984, the "target percentage" is 75 percent and the "DRG percentage" is 25 percent;

(ii) on or after October 1, 1984, and before October 1, 1985, the "target percentage" is 50 percent and the "DRG percentage" is 50 percent; and

(iii) on or after October 1, 1985, and before October 1, 1986 the "target percentage" is 25 percent and the "DRG percentage" is 75 percent.

(D) For purposes of subparagraph (A)(ii)(II), the "applicable combined adjusted DRG prospective payment rate" for [cost reporting periods beginning, or] discharges occurring—

(i) on or after October 1, 1984, and before October 1, 1985, is a combined rate consisting of 25 percent of the national adjusted DRG prospective payment rate, and 75 percent of the regional adjusted DRG prospective payment rate, determined under paragraph (3) for such discharges; and

(ii) on or after October 1, 1985, and before October 1, 1986, is a combined rate consisting of 50 percent of the national adjusted DRG prospective payment rate, and 50 percent of the regional adjusted DRG prospective payment rate, determined under paragraph (3) for such discharges.

* * * * * * *

(3) The Secretary shall determine a national adjusted DRG prospective payment rate, for each inpatient hospital discharge in a fiscal year after fiscal year 1984 involving inpatient hospital services of a subsection (d) hospital in the United States, and shall determine a regional adjusted DRG prospective payment rate for such discharges in each region for which payment may be made under part A of this title. Each such rate shall be determined for hospitals located in urban or rural areas within the United States and within each such region, respectively, as follows:

(A) UPDATING PREVIOUS STANDARDIZED AMOUNTS.—The Secretary shall compute an average standardized amount for hospitals located in an urban area and for hospitals located in a rural area within the United States and for hospitals located in an urban area and for hospitals located in a rural area within each region, equal to the respective average standardized amount computed for the previous fiscal year under paragraph (2)(D) or under this subparagraph, increased for fiscal year 1985 by the applicable percentage increase under subsection (b)(3)(B), and adjusted for subsequent fiscal years in accordance with the final determination of the Secretary under subsection (e)(4), and adjusted to reflect the most recent casemix data available.

(B) REDUCING FOR VALUE OF OUTLIER PAYMENTS.—The Secretary shall reduce each of the average standardized amounts determined under subparagraph (A) by a proportion equal to the proportion (estimated by the Secretary) of the amount of payments under this subsection based on DRG prospective payment amounts which are additional payments described in paragraph (5)(A) (relating to outlier payments).

(C) MAINTAINING BUDGET NEUTRALITY.—The Secretary shall adjust each of such average standardized amounts as may be required under subsection (e)(1)(B) for that fiscal year.

(D) COMPUTING DRG-SPECIFIC RATES FOR URBAN AND RURAL HOSPITALS.—For each discharge classified within a diagnosis-related group, the Secretary shall establish for the fiscal year a national DRG prospective payment rate and shall establish a regional DRG prospective payment rate for each region, each of which is equal—

(i) for hospitals located in an urban area in the United States that region (respectively), to the product of—

(I) the average standardized amount (computed under subparagraph (A), reduced under, reduced under subparagraph (B), and adjusted under subparagraph **[**(C)**]**, *(C))* for the fiscal year for hospitals located in an urban area in the United States or that region, and

(II) the weighting factor (determined under paragraph (4)(B)) for that diagnosis-related group; and

(ii) for hospitals located in a rural area in the United States or that region (respectively), to the product of—

(I) the average standardized amount (computed under subparagraph (A), reduced under subparagraph (B), and adjusted under subparagraph (C)) for the fiscal year for hospitals located in a rural area in the United States or that region, and

(II) the weighting factor (determined under paragraph (4)(B)) for that diagnosis-related group.

(E) ADJUSTING FOR DIFFERENT AREA WAGE LEVELS.—The Secretary shall adjust the proportion, (as estimated by the Secretary from time to time) of hospitals' costs which are attributable to wages and wage-related costs, of the DRG prospective payment rates computed under subparagraph (D) for area differences in hospital wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the hospital compared to the national average hospital wage level. *The Secretary shall establish criteria under which, in the case of a hospital that demonstrates to the secretary in a current fiscal year that the adjustment being made under the previous sentence (or under paragraph (2)(H)) for that hospital's discharges in that fiscal year does not accurately reflect the wage levels in the labor market serving the hospital, the Secretary, to the extent he deems appropriate, shall modify such adjustment for that hospital for discharges in the subsequent fiscal year to take into account a difference in payment amounts in that current fiscal year to the hospital that resulted from such inaccuracy.*

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(e)(1)(A) * * *.

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(5) The Secretary shall cause to have published [for public comment] in the Federal Register, not later than—

(A) the June 1 before each fiscal year (beginning with fiscal year 1986), the Secretary's proposed determination under paragraph (4) for that fiscal year *for public comment,* and

(B) the September 1 before such fiscal year after such consideration of public comment on the proposal as is feasible in the time available, the Secretary's final determination under such paragraph for that year.

The Secretary shall include in the publication referred to in subparagraph (A) for a fiscal year the report of the Commission's recommendations submitted under paragraph (3) for that fiscal year.

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TITLE XIX—GRANTS TO STATES FOR MEDICAL ASSISTANCE PROGRAMS

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APPROPRIATION

SEC. 1901. For the purpose of enabling each State, as far as practicable under the conditions in such State, to furnish (1) medical assistance on behalf of familes with dependent children and of aged, blind, or disabled individuals, whose income and resources are insufficient to meet the cost of necessary medical services, and (2) rehabilitation and other services to help such families and individuals attain or retain capability for independence or self-care, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this title. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretry [of Health, Education, and Welfare], State plans for medical assistance.

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TITLE XX—BLOCK GRANTS TO STATES FOR SOCIAL SERVICES

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PAYMENTS TO STATES

SEC. 2002. (a)(1) * * *

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(b) The Secretary shall make payments in accordance with section [203 of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4213)] *6503 of title 31, United States Code,* to each State from its allotment for use under this title.

* * * * * * *

REPORTS AND AUDITS

SEC. 2006. (a) Each State shall prepare reports on its activities carried out with funds made available (or transferred for use) under this title. Reports shall be in such form, contain such information, and be of such frequency (but not less ofter than every two years) as the state finds necessary to provide an accurate description of such activities, to secure a complete record of the purposes for which funds were spent, and to determine the extent to which funds were spent in a manner consistent with the reports required by section 2004. The State shall make copies of the reports required by this section available for public inspection within the State and shall transmit a copy to the Secretary. Copies shall also be provided, upon request, to any interested public agency, and each such agency may provide its views on these reports to the Congress.

(b) Each State shall, not less ofter than every two years, audit its expenditures from amounts received (or transferred for use) under this title. Such State audits shall be conducted by an entity independent of any agency administering activities funded under this title, in accordance with generally accepted auditing principles. Within 30 days following the completion of each audit, the State shall submit a copy of that audit to the legislature of the State and to the Secretary. Each State shall repay to the United States amount ultimately found not to have been expended in accordance with this title, or the Secretary may offset such amounts against any other amount to which the State is or may become entitled under this title.

(c) For other provisions requiring States to account for Federal grants, see section [202 of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4212)] *6503 of title 31, United States Code.*

* * * * * * *

PUBLIC LAW 97-455

AN ACT To amend Internal Revenue Code of 1954 to reduce the rate of certain taxes paid to the Virgin Islands on Virgin Islands source income, to amend the Social Security Act to provide for a termporary period that payment of disability benefits may continue through the hearing stage of the appeals process, and for other purposes

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[SEC. 4. EVIDENTIARY HEARINGS IN RECONSIDERATIONS OF DISABILITY BENEFIT TERMINATIONS.

[(a) IN GENERAL.—Section 205(b) of the Social Security Act is amended—

[(1) by inserting "(1)" after "(b)"; and

[(2) by adding at the end thereof the following new paragraph:

["(2) In any case where—

["(A) an individual is a recipient of disability insurance benefits, or of child's, widow's, or widower's insurance benefits based on disability,

["(B) the physical or mental impairment on the basis of which such benefits are payable is found to have ceased, not to have existed, or to no longer be disabling, and

["(C) as a consequence of the finding described in subparagraph (B), such individual is determined by the Secretary not to be entitled to such benefits.

any reconsideration of the finding described in subparagraph (B), in connection with a reconsideration by the Secretary (before any hearing under paragraph (1) on the issue of such entitlement) of his determination described in subparagraph (C), shall be made only after opportunity for an evidentiary hearing, with regard to the finding described in subparagraph (B), which is reasonably accessible to such individual. Any reconsideration of a finding described in subparagraph (B) may be made either by the State agency or the Secretary where the finding was originally made by the State agency, and shall be made by the Secretary where the finding was originally made by the Secretary. In the case of a reconsideration by a State agency of a finding described in subparagraph (B) which was originally made by such State agency, the evidentiary hearing shall be held by an adjudicatory unit of the State agency other than the unit that made the finding described in subparagraph (B). In the case of a reconsideration by the Secretary of a finding described in subparagraph (B) which was originally made by the Secretary, the evidentiary hearing shall be held by a person other than the person or persons who made the finding described in subparagraph (B).".

[(b) EFFECTIVE DATE.— The amendments made by subsection (a) shall apply with respect to reconsiderations (of findings described in section 205(b)(2)(B) of the Social Security Act) which are requested on or after such date as the Secretary Health and Human Services may specify, but in any event not later than January 1, 1984.

[SEC. 5. CONDUCT OF FACE-TO-FACE RECONSIDERATIONS IN DISABILITY CASES.

[The Secretary of Health and Human Services shall take such steps as may be necessary or appropriate to assure public understanding of the importance the Congress attaches to the face-to-face reconsiderations provided for in section 205(b)(2) of the Social Security Act (as added by section 4 of this Act). For this purpose the Secretary shall—

[(1) provide for the establishment and implementation of procedures for the conduct of such reconsiderations in a manner which assures that beneficiaries will receive reasonable notice and information with respect to the time and place of reconsideration and the opportunities afforded to introduce evidence and be represented by counsel; and

[(2) advise beneficiaries who request or are entitled to request such reconsiderations of the procedures so established, of their opportunities to introduce evidence and be represented by counsel at such reconsiderations, and of the importance of submitting all evidence that relates to the question before the Secretary or the State agency at such reconsiderations.]

* * * * * * *

SECTION 5315 OF TITLE 5, UNITED STATES CODE

§ 5315. Positions at level IV

Level IV of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Deputy Administrator of General Services.

* * * * * * *

Administrator of the Health Care Financing Administration.

SECTION 7 OF THE RAILROAD RETIREMENT ACT OF 1974

POWERS AND DUTIES OF THE BOARD

SEC. 7. (a) * * *

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(d)(1) * * *

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(4) The rights of individuals described in subdivision (2) of this subsection to have payment made on their behalf for the services referred to in subdivision (1) but provided in Canada shall be the same as those of individuals to whom section 226 and part A of

title XVIII of the Social Security Act apply, and this subdivision shall be administered by the Board as if the provisions of section 226 and part A of title XVIII of the Social Security Act were applicable, as if references to the Secretary of Health, Education, and Welfare were to the Board, as if references to the Federal Hospital Insurance Trust Fund were to the Railroad Retirement Account, as if references to the United States or a State included Canada or a subdivision thereof, and as if the provisions of sections 1862(a)(4), 1863, 1864, [1867,] 1868, 1869, 1874(b), and 1875 were not included in such title. The payments for services herein provided for in Canada shall be made from the Railroad Retirement account (in accordance with, and subject to, the conditions applicable under section 7(b), in making payment of other benefits) to the hospital, extended care facility, or home health agency providing such services in Canada to individuals to whom subdivision (2) of this subsection applies, but only to the extent that the amount of payments for services otherwise hereunder provided for an individual exceeds the amount payable for like services provided pursuant to the law in effect in the place in Canada where such services are furnished. For the purposes of section 10 of this Act, any overpayment under this subdivision shall be treated as if it were an overpayment of an annuity.

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SECTION 361 OF THE SOCIAL SECURITY AMENDMENTS OF 1977

ESTABLISHMENT OF COMMISSION

SEC. 361. (a)(1) * * *

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[(i) It shall be the duty of the Health Insurance Benefits Advisory Council (established by section 1867 of the Social Security Act) to provide timely notice to the Commission of any meeting, and the Chairman of the Commission (or his delegate) shall be entitled to attend any such meeting.]

SOCIAL SECURITY AMENDMENTS OF 1983

TITLE I—PROVISIONS AFFECTING THE FINANCING OF THE SOCIAL SECURITY SYSTEM

PART A—COVERAGE

COVERAGE OF NEWLY HIRED FEDERAL EMPLOYEES

SEC. 101. (a) * * *

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(d) The amendments made by this section shall be effective with respect to [remuneration paid] *service performed* after December 31, 1983.

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PART B—COMPUTATION OF BENEFIT AMOUNTS

SHIFT OF COST-OF-LIVING ADJUSTMENTS TO CALENDAR YEAR BASIS

SEC. 111. (a)(1) * * *

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(e) Section 403(b) of the Omnibus *Budget* Reconciliation Act of 1982 (Public Law 97-253) is amended to read as follows:

"(b)(1) Except as provided in paragraph (2), the amendment made by subsection (a)(1) shall apply with respect to amounts payable for periods beginning after May 31, 1983.

"(2) In the cases of individuals to whom pension is payable under sections 521, 541, and 542 of title 38, United States Code, the amendment made by subsection (a)(1) shall take effect on the first day after May 31, 1983, that an increase is made in maximum annual rates of pension pursuant to section 3112 of title 38, United States Code.".

COST-OF-LIVING INCREASES TO BE BASED ON EITHER WAGES OR PRICES (WHICHEVER IS LOWER) WHEN BALANCE IN OASDI TRUST FUNDS FALLS BELOW SPECIFIED LEVEL

SEC. 112. (a) * * *

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(f) Notwithstanding anything to the contrary in section 215(i)(1)(F) of the Social Security Act (as added by subsection (a)(4) of this section), the combined balance in the Trust Funds which is to be used in determining the "OASDI fund ratio" with respect to the calendar year 1984 under such section shall be the estimated combined balance in such Funds as of the close of that year (rather than as of its beginning), including the taxes transferred under section 201(a) *of such Act* on the first day of the year following that year.

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TITLE II—ADDITIONAL PROVISIONS RELATING TO LONG-TERM FINANCING OF THE SOCIAL SECURITY SYSTEM

INCREASE IN RETIREMENT AGE

SEC. 201. (a) * * *

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(c) Title II of the Social Security Act is further amended—

(1) by striking out "age 65" or "*the* age of 65", as the case may be, each place it appears in the following sections and in-

serting in lieu thereof in each instance "retirement age (as defined in section 216(l))":

(A) subsections (a), (b), (c), (d), (e), (f), (q), (r), and (w) of section 202;

(B) subsections (c) (as amended by section 309(g) of this Act) and (f) of section 203;

(C) subsection (f) of section 215;

(D) subsections (h) and (i) of section 216; and

(E) section 223(a); and

(2) by striking out "age sixty-five" in section 203(c) (as amended by section 309(g) of this Act) and inserting in lieu thereof "retirement age (as defined in section 216(l))"; and

(3) by striking out "*the* age of sixty-five" in section 223(a) and inserting in lieu thereof "retirement age (as defined in section 216(l))".

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TITLE III—MISCELLANEOUS AND TECHNICAL PROVISIONS

PART A—ELIMINATION OF GENDER-BASED DISTINCTIONS

DIVORCED HUSBANDS

SEC. 301. (a)(1) * * *

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(5) [Section 202(c)] *Effective with respect to monthly insurance benefits for months after December 1984 (but only on the basis of applications filed on or after January 1, 1985), section 202(c)* of such Act is further amended by adding after paragraph (4) (as added by paragraph (4) of this subsection) the following new paragraph:

"(5)(A) Notwithstanding the preceding provisions of this subsection, except as provided in subparagraph (B), the divorced husband of an individual who is not entitled to old-age or disability insurance benefits, but who has attained age 62 and is a fully insured individual (as defined in section 214), if such divorced husband—

"(i) meets the requirements of subparagraphs (A) through (D) of paragraph (1), and

"(ii) has been divorced from such insured individual for not less than 2 years,

shall be entitled to a husband's insurance benefit under this subsection for each month, in such amount, and beginning and ending with such months, as determined (under regulations of the Secretary) in the manner otherwise provided for husband's insurance benefits under this subsection, as if such insured individual had become entitled to old-age insurance benefits on the date on which the divorced husband first meets the criteria for entitlement set forth in classes (i) and (ii).

"(B) A husband's insurance benefit provided under this paragraph which has not otherwise terminated in accordance with subparagraph (E), (F), (H), or (I) of paragraph (1) shall terminate with the month preceding the first month in which the insured individual is no longer a fully insured individual.".

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EQUALIZATION OF BENEFITS UNDER SECTION 228

SEC. 305. (a) * * *

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(d) Section 228 of such Act is further amended—

(1) by striking out "he" wherever it appears in subsections (a) and (c)(1) and inserting in lieu thereof "he or she"; and

(2) by striking out "his" *each place it appears* in subsection (c)(4)(C) and inserting in lieu thereof "his or her".

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PART B—COVERAGE

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EXTENSION OF COVERAGE BY INTERNATIONAL SOCIAL SECURITY AGREEMENT

SEC. 322. (a)(1) Section 210(a) of the Social Security Act (as amended by sections 321(b) and 323(a)(2) of this Act) is further amended, in the matter preceding paragraph (1)—

(A) by striking out "either" before "(A)", and

(B) by inserting before "**[**; except**]**, *except*" the following: ", or (C) if it is service, regardless of where or by whom performed, which is designated as employment or recognized as equivalent to employment under an agreement entered into under section 233".

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AMOUNTS RECEIVED UNDER CERTAIN DEFERRED COMPENSATION AND SALARY REDUCTION ARRANGEMENTS TREATED AS WAGES FOR FICA TAXES

SEC. 324. (a)(1) * * *

* * * * * * *

(d)(1) Except as otherwise provided in this subsection, the amendments made by this section shall apply to remuneration paid after December 31, 1983. *For purposes of applying such amendments to remuneration paid after December 31, 1983, which would have been taken into account before January 1, 1984, if such amendments had applied to periods before January 1, 1984, such remuneration shall be taken into account when paid (or, at the election of the payor, at the time which would be appropriate if such amendments had applied).*

(2) Except as otherwise provided in this subsection, the amendments made by subsection (b) shall apply to remuneration paid after December 31, 1984. *For purposes of applying such amendments to remuneration paid after December 31, 1984, which would have been taken into account before January 1, 1985, if such amendments*

had applied to periods before January 1, 1985, such remuneration shall be taken into account when paid (or, at the election of the payor, at the time which would be appropriate if such amendments had applied).

* * * * * * *

(4) In the case of an agreement in existence on March 24, 1983, between a nonqualified deferred compensation plan (as defined in section 3121(v)(2)(C) of the Internal Revene Code of 1954, as added by this section) and an individual—

(A) the amendments made by this section (other than subsection (b)) shall apply with respect to services performed by such individual after December 31, 1983, and

(B) the amendments made by subsection (b) shall apply with respect to services performed by such individual after December 31, 1984.

The preceding sentence shall not apply in the case of a plan to which section 457(a) of such Code applies. *For purposes of this paragraph, any plan or agreement to make payments described in paragraph (2), (3), or (13)(A)(iii) of section 3121(a) of such Code (as in effect on the day before the date of the enactment of this Act) shall be treated as a nonqualified deferred compensation plan.*

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CODIFICATION OF ROWAN DECISION WITH RESPECT TO MEALS AND LODGING

SEC. 327. (a)(1) * * *

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[(d)(1) Except as provided in paragraph (2), the amendments made by subsections (a) and (b) shall apply to remuneration paid after December 31, 1983.

[(2) The amendments made by subsection (c) shall apply to remuneration paid after December, 31, 1984.]

(d)(1) The amendments made by subsection (a) shall apply to remuneration paid after December 31, 1983.

(2) The amendments made by subsection (b) and subsection (c)(4) shall apply to remuneration (other than amounts excluded under section 119 of the Internal Revenue Code of 1954) paid after March 4, 1983, and to any such remuneration paid on or before such date which the employer treated as wages when paid.

(3) The amendments made by paragraphs (1), (2), and (3) of subsection (c) shall apply to remuneration paid after December 31, 1984.

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PART C—OTHER AMENDMENTS

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LIMITATION ON PAYMENTS TO PRISONERS

SEC. 339. (a) * * *

[(b) Section 223 of such Act is amended by striking out subsection (f).]

(b) Section 223(f) of such Act is amended to read as follows:

(f) For provisions relating to limitation on payments to prisoners, see section 202(x).

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TITLE VI—PROSPECTIVE PAYMENTS FOR MEDICARE INPATIENT HOSPITAL SERVICES

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CONFORMING AMENDMENTS

SEC. 602. (a) * * *

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(h)(1) Section 1878(a) of such Act is amended—

(A) by inserting "and (except as provided in subsection (g)(2)) any hospital which receives payments in amounts computed under subsection (b) or (d) of section 1886 and which has submitted such reports within such time as the Secretary may require in order to make payment under such section may obtain a hearing with respect to such payment by the Board" after "subsection (h)" in the matter before paragraph (1),

(B) by inserting "(i)" after "(A)" in paragraph (1)(A),

(C) by inserting "or" at the end of paragraph (1)(A) and by adding after such paragraph the following new clause:

"(ii) is dissatisfied with a final determination of the Secretary as to the amount of the payment under subsection (b) or (d) of section 1886,", and

(D) by striking out "(1)(A)" in paragraph (3) and inserting in lieu thereof "(1)(A)(i), or with respect to appeals under paragraph (1)(A)(ii), 180 days after notice of the Secretary's final determination,".

(2)(A) The last sentence of section 1878(f)(1) of the Social Security Act is amended by inserting "(or, in an action brought jointly by several providers, the judicial district in which the greatest number of such providers are located)" after "the judicial district in which the provider is located".

(B) Section 1878(f)(1) of such Act is further amended by adding at the end thereof the following new sentence: "Any appeal to the Board or action for judicial review by providers which are under common ownership or control must be brought by such providers as a group with respect to any matter involving an issue common to such providers.".

(C) Notwithstanding section 604(a)(1), the amendments made by this paragraph shall be effective with respect to any appeal or action brought on or after the date of the enactment of this Act.

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REPORTS, EXPERIMENTS, AND DEMONSTRATION PROJECTS

SEC. 603. (a)(1) The Secretary of Health and Human Services (hereinafter in this title referred to as the "Secretary") shall study, develop, and report to the Congress within 18 months after the date of the enactment of this Act on the method and proposals for legislation by which capital-related costs, such as return on net equity, associated with inpatient hospital services can be included within the prospective payment amounts computed under section 1886(d) of the Social Security Act.

(2)(A) The Secretary shall study and report annually to the Congress at the end of each year (beginning with 1984 and ending with 1987) on the impact, of the payment methodology under section 1886(d) of the Social Security Act during the previous year, on classes of hospitals, beneficiaries, and other payors for inpatient hospital services, and other providers, and, in particular, on the impact of computing DRG prospective payment rates by census division, rather than exclusively on a national basis. Each such report shall include such recommendations for such changes in legislation as the Secretary deems appropriate.

(B) During fiscal year 1984, the Secretary shall begin the collection of data necessary to compute the amount of physician charges attributable, by diagnosis-related groups, to physicians' services furnished to inpatients of hospitals whose discharges are classified within those groups. The Secretary shall [include, in a report to Congress in 1985,] *submit to Congress, not later than July 1, 1985, a report to Congress which includes* recommendations on the advisability and feasibility of providing for determining the amount of the payments for physicians' services *and for services of certified registered nurse anesthetists* furnished to hospital inpatients based on the DRG type classification of the discharges of those inpatients, and legislative recommendations thereon.

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EFFECTIVE DATES

SEC. 604. (a)(1) * * *

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(c)(1) The Secretary shall cause to be published in the Federal Register a notice of the interim final DRG prospective payment rates established under subsection (d) of section 1886 of the Social Security Act (as amended by this title) no later than September 1, 1983, and allow for a period of public comment thereon. Payment on the basis of prospective rates shall become effective on October 1, 1983, without the necessity for consideration of comments received, but the Secretary shall, by notice published in the Federal Register, affirm or modify the amounts by December 31, 1983, after considering those comments.

(2) A modification under paragraph (1) that reduces a prospective payment rate shall apply only to discharges occurring after 30 days after the date the notice of the modification is published in the Federal Register.

(3) Rules [to implement subsection (d) of section 1886 of the Social Security Act (as so amended)] *to implement the amendments made by this title* shall be established in accordance with the procedure described in this subsection.

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PUBLIC LAW 97-35

AN ACT To provide for reconciliation pursuant to section 301 of the first concurrent resolution on the budget for the fiscal year 1982

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TITLE XXII—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE PROGRAM

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RESTRICTIONS ON THE LUMP-SUM DEATH PAYMENT

SEC. 2202. (a)(1) Section 202(i) of the Social Security Act is amended—

(A) in the second sentence, by striking out paragraphs (1), (2), (3), and (4) and inserting in lieu thereof the following:

"(1) to a widow (as defined in section 216(c)) or widower (as defined in section 216(g)) who is entitled (or would have been so entitled had a timely application been filed), on the basis of the wages and self-employment income of such insured individual, to benefits under subsection (e), (f), or (g) of this section for the month in which occurred such individual's death; or

"(2) if no person qualifies for payment under paragraph (1), or if such person dies before receiving payment, in equal shares to each person who is entitled (or would have been so entitled had a timely application been filed), on the basis of the wages and self-employment income of such insured individual, to benefits under subsection (d) of this section for the month in which occurred such individual's death."; and

(B) in the third sentence, by striking out "(except a payment [as] authorized pursuant to clause (1)(A) of the preceding sentence)".

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PAYMENT OF CERTAIN BENEFITS ONLY FOR MONTHS AFTER MONTH IN WHICH ENTITLEMENT CONDITIONS ARE FULFILLED

SEC. 2203. (a) * * *

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(d)(1) * * *

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(4) Section 216(h) of such Act is amended by adding at the end of paragraph (3) *(after and below subparagraph (C)(ii))* the following new sentence: "For purposes of subparagraph (A)(i), an acknowledgement, court decree, or court order shall be deemed to have occurred on the first day of the month in which it actually occurred.".

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TITLE XXIII—PUBLIC ASSISTANCE PROGRAMS

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Subtitle C—Block Grants for Social Services

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CONFORMING AMENDMENTS TO THE SOCIAL SECURITY ACT

SEC. 2353. (a)(1) * * *

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(h) Section 1116 of such Act is amended—

(1) in subsections (a)(1) and (b), by striking out "XIX[,] or XX" and inserting in lieu thereof "or XIX";

(2) in subsection (a)(3), by striking out "1904, or 2003" and inserting in lieu thereof "or 1904"; and

(3) in subsection (d), by striking out "XIX, XX" and inserting in lieu thereof "or XIX".

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PUBLIC LAW 96-499

AN ACT To provide for reconciliation pursuant to section 3 of the First Concurrent Resolution on the Budget for the fiscal year 1981

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TITLE IX—MEDICARE AND MEDICAID RELATED PROVISIONS

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PART A—PROVISIONS RELATING TO MEDICARE AND MEDICAID

Subpart I—Provider Reimbursement Changes

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CONTINUED USE OF DEMONSTRATION PROJECT REIMBURSEMENT SYSTEMS

SEC. 903. (a) Section 1814(b) of the Social Security Act is amended—

(1) by inserting "except as provided in paragraph (3)," in paragraph (1) before "the lesser",

(2) by striking out "or" at the end of paragraph (1),

(3) by striking out the period at the end of paragraph (2) and inserting in lieu thereof "; or", and

(4) by adding at the end thereof the following [new paragraph]:

"(3) if some or all of the hospitals in a State have been reimbursed for services (for which payment may be made under this part) pursuant to a reimbursement system approved as a demonstration project under section 402 of the Social Security Amendments of 1967 or section 222 of the Social Security Amendments of 1972, if the rate of increase in such hospitals in their costs per hospital inpatient admission of individuals entitled to benefits under this part over the duration of such project was equal to or less than such rate of increase for admissions of such individuals with respect to all hospitals in the United States during such period, and if either the State has legislative authority to operate such system and the State elects to have reimbursement to such hospitals made in accordance with this paragraph or the system is operated through a voluntary agreement of hospitals and such hospitals elect to have reimbursement to those hospitals made in accordance with this paragraph, then the Secretary may provide for continuation of reimbursement to such hospitals under such system until the Secretary determines that—

"(A) a third-party payor reimburses such a hospital on a basis other than under such system, or

"(B) the rate of increase for the previous three-year period in such hospitals in costs per hospital inpatient admission of individuals entitled to benefits under this part is greater than such rate of increase for admissions of such individuals with respect to all hospitals in the United States for such period.

In the case of any State which has had such a demonstration project reimbursement system in continuous operation since July 1, 1977, the Secretary shall provide under paragraph (3) for continuation of reimbursement to hospitals in the State under such system until the Secretary determines that either of the conditions described in subparagraph (A) or (B) of such paragraph occurred.".

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PART—PROVISIONS RELATING TO MEDICARE

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OPTOMETRISTS' SERVICES

SEC. 937. (a) Clause (4) of the first sentence of section 1861(r) of the Social Security Act is amended by striking out "but only with respect to establishing their necessity for prosthetic lenses,"and inserting in lieu thereof "but only with respect to services related to the condition of aphakia,".

(b) The Secretary of Health and Human Services shall submit to the Congress by January 1, 1982, legislative recommendations with respect to reimbursement under title XVIII of the Social Security Act for services furnished by optometrists in connection with cataracts and such other services which they are legally authorized to perform.

(c) The amendment made by subsection (a) shall apply to services furnished [on on] *on or* after July 1, 1981.

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TRADE ACT OF 1974

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TITLE II—RELIEF FROM INJURY CAUSED BY IMPORT COMPETITION

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CHAPTER 2—ADJUSTMENT ASSISTANCE FOR WORKERS

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Subchapter B—Program Benefits

PART I—TRADE READJUSTMENT ALLOWANCES

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SEC. 233. LIMITATIONS ON TRADE READJUSTMENT ALLOWANCES.

(a)(1) The maximum amount of trade readjustment allowances payable with respect to the period covered by any certification to an adversely affecterd worker shall be the amount which is the product of 52 multiplied by the trade readjustment allowance payable to the worker for a week of total unemployment (as determined under section 232(a)), but such product shall be reduced by the total sum of the unemployment insurance to which the worker was entitled (or would have been entitled if he had applied therefor) in the worker's first benefit period described in section 231(a)(3)(A).

(2) A trade readjustment allowance shall not be paid for any week after the 52-week period beginning with the first week following the first week in the period covered by the certification with respect to which the worker has exhausted (as determined for pur-

poses of section 231(a)(3)(B)) all rights to that part of his unemployment insurance that is regular compensation.

(3) [Notwithstanding paragraph (1), in accordance with regulations prescribed by the Secretary, payments may be made as trade readjustment allowances for up to 26 additional weeks in the 26-week period following the last week of entitlement to trade readjustment allowances otherwise payable under this chapter in order to assist the adversely affected worker to complete training approved for the worker under section 236.] *Notwithstanding paragraph (1), in order to assist the adversely affected worker to complete training approved for him under section 236, and in accordance with regulations prescribed by the Secretary, payments may be made as trade readjustment allowances for up to 26 additional weeks in the 26-week period that—*

(A) follows the last week of entitlement to trade readjustment allowances otherwise payable under this chapter; or

(B) begins with the first week of such training, if such training is approved after the last week described in subparagraph (A).

Payments for such additional weeks may be made only for weeks in such 26-week period during which the individual is engaged in such training and has not been determined under section 236(c) to be failing to make satisfactory progress in the training.

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PART III—JOB SEARCH AND RELOCATION ALLOWANCES

SEC. 237. JOB SEARCH ALLOWANCES.

(a) Any adversely affected worker covered by a certification under subchapter A of this chapter may file an application with the Secretary for a job search allowance. Such allowance, if granted, shall provide reimbursement to the worker of 90 percent of the cost of necessary job search expenses as prescribed by regulations of the Secretary; except that—

(1) such reimbursement may not exceed [$600] *$800* for any worker, and

(2) reimbursement may not be made for subsistence and transportation expenses at levels exceeding those allowable under section 236(b)(1) and (2).

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SEC. 238. RELOCATION ALLOWANCES.

(a) * * *

* * * * * * *

(d) For the purposes of this section, the term "relocation allowance" means—

(1) * * *

(2) a lump sum equivalent to three times the worker's average weekly wage, up to a maximum payment of [$600.] *$800.*

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CHAPTER 3—ADJUSTMENT ASSISTANCE FOR FIRMS

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SEC. 265. ASSISTANCE TO INDUSTRIES.

(a) The Secretary may provide technical assistance, on such terms and conditions as the Secretary deems appropriate, for the establishment of industrywide programs for new product development, new process development, export development, or other uses consistent with the purposes of this chapter. Such technical assistance may be provided through existing agencies, private individuals, firms, universities and institutions, and by grants, contracts, or cooperative agreement to associations, unions, or other nonprofit industry organizations in which a substantial number of firms *or workers* have been certified as eligible to apply for adjustment assistance under section *223 or* 251.

(b) Expenditures for technical assistance under this section may be up to **[**$2,000,000**]** *$10,000,000* annually per industry and shall be made under such terms and conditions as the Secretary deems appropriate.

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IX. SUPPLEMENTAL, ADDITIONAL, AND ADDITIONAL SUPPLEMENTAL VIEWS

SUPPLEMENTAL VIEW ON PRIVATE FOUNDATIONS

CONGRESSMAN JAMES R. JONES

One question with which I have been directly involved over the last several years which the Committee unfortunately failed to address is the 1969 provision requiring private foundations to divest themselves of business holdings acquired by gift or bequest.

Prior to enactment of the 1969 reforms, a number of individuals created foundations to avoid paying estate taxes on family enterprises, while at the same time maintaining effective control over these businesses. To stop this practice, and clear abuse, Congress passed a provision to force all foundations to divest themselves of majority ownership in all ongoing enterprises. Although several clearly abusive cases were rectified, the action taken in 1969 was similar to throwing the baby out with the bathwater. Revisions in Section 4943 are clearly long overdue. It is unfortunate our Committee rejected what I consider to be a reasonable proposal allowing foundations to elect a one-time exemption from the divestiture rules, under certain conditions. Specifically, the proposal presented to our Committee allowed foundations to hold their excess business assets, if minimum cash distributions were made from the subsidiary to the foundation. I believe the testimony taken by the Oversight Subcommittee decisively showed that the concerns leading to the 1969 reforms are not a problem today, and the proposal offered as its replacement provided adequate safeguards.

Let me briefly mention two foundations affected by the 1969 provision, both of which I am intimately familiar. In my District, there is a foundation which provides care solely for orphans and widows. It supports itself fully through its business holdings. Established in 1908, the foundation has cared for a total of 800 independent children and has given substantial care for more than 3,000 widows and more than 8,000 of their dependent children. The abuses Congress was attempting to eradicate in 1969 are not even remotely applicable to this fundation. The foundation has been in existence longer then income and estate tax laws.

Another foundation in my District was established by a couple with no natural-born or adopted children. Furthermore, neither the husband nor the wife served as "managers" of the foundation, nor did they sit on the foundation's board of trustees. Both the wife and husband passed away in the early 1960's, but because of the couple's devotion and interst in their community, the foundation is operating today, and the trustees anticipate that the foundation will give grants in excess of $15 million during the current fiscal year.

These two examples are among the many worthwhile foundations which have been unnecessarily hurt by the overly broad Act of 1969. At this time, the foundations in my District are facing the prospect of divesting themselves of their business holdings at "fire-sale" prices.

Even more alarming is my fear that the excess business holdings provisions have had a chilling effect on potential contributions to private foundations. Whey should citizens contribute the holdings of their lifelong achievements to a private foundation, knowing that those achievements will be dismantled in a relatively short period?

The 1961 reforms were enacted in what one participant described as a "charged atmosphere." The reports, documents, and personal accounts that were filed with this committee indicate that we have corrected "the abusive cases." It is now time to reevaluate the actions taken in 1969. We should be guided by two objectives in this endeavor. First, we should eliminate or revamp burdensome and antiquated laws. Second, we should make certain only foundations operating for the public, and not private, benefit enjoy favorable tax treatment.

I regret that our Committee did not remove the restrictions that are impeding private foundations in their efforts to deliver charitable services to the public.

JAMES R. JONES.

SUPPLEMENTAL VIEWS OF HON. JAMES R. JONES, HON. BERYL ANTHONY, JR., AND HON. CARROLL A. CAMPBELL, JR.

The United States now faces a budgetary crisis which the administration and Congress appear unwilling to resolve until after the 1984 elections. The First Budget Resolution for Fiscal Year 1984 which was adopted by a vote of 239 to 186, calls for spending reductions of $12.3 billion, and revenue increases of $73 billion, for fiscal years 1984-86. Compliance with these budget targets were projected to produce a deficit of $179.3 billion in fiscal year 1984 declining to $130.8 billion by fiscal year 1986. The action recommended by the Committee on Ways and Means in H.R. 4170 does not meet the budget goals which Congress established. While H.R. 4170 technically meets the instructions of the budget resolution to the Ways and Means Committee for spending reductions, the key reform for controlling Medicare cost growth was not supported by a majority of this Committee. The revenue increases in this bill are estimated to fall short of the reconciliation target for fiscal years 1984-86 by at least $65 billion.

The grim budget outlook predicted by the non-partisan Congressional Budget Office in which budget deficits in the range of $200 billion persist, has produced a political catatonia, in which both parties appear unwilling to be first in proposing the tough actions needed to resolve the crisis. We are filing these supplemental views to recommend an alternative approach which would begin to bring the budget under control. This approach is incorporated in H.R. 3790, which we have sponsored. H.R. 3790 would reduce the indexing in both the income tax and in non-means-tested entitlement programs by 2 percentage points each year during the years 1985-90. Although income tax indexing and COLAs tied to the CPI for non-means-tested entitlement programs are strongly supported by many Members, we believe a compromise is required if the deficits are to be significantly reduced. A temporary modification in tax indexing scheduled to begin for calendar year 1985 is necessary in order to reduce the rapid rise in the projected structural budget deficit throughout the remainder of this decade and the next caused by the indexing of individual income tax for inflation and COLAs for entitlement programs. The revenue loss from indexing rises from $5.3 billion in 1985 increasing to $74.2 billion by 1990.

In conjunction with a temporary modification of the Tax Code, H.R. 3790 would also make a temporary change in annual cost-of-living (COLA) adjustments for non-means-tested programs primarily pensions not related to need. Like the Tax Code, adjustments during fiscal years 1985-90 for these programs would be based on the annual change in the CPI or other relevant index less 2 percentage points rather than the full cost-of-living adjustment. This limitation would expire at the end of fiscal year 1990, at which time, the Congress could reassess the issue in light of the current economic and budgetary situation.

An important feature of H.R. 3790 is that full COLA's are continued for entitlement programs serving the poor in which benefit increases are tied to inflation. In these means-tested entitlement programs, such as SSI, food stamps, and child nutrition, indexing serves to place a floor under real benefit levels, as distinct from the maintenance of real benefit levels by indexing of non-means-tested benefits. Some recipients of non-means-tested programs, especially social security, have low incomes, and arguably should have real benefit levels protected. But clearly the efficient way to do this is to modify the "safety net" programs themselves to provide an offset, as was done in the recent social security legislation, rather than to exclude the great majority of beneficiaries with middle and high incomes from sacrifice in order to protect benefit levels for the minority of beneficiaries with low incomes.

Indexing is the single largest component of Federal spending over which the Congress perceives itself as having little control. To date, some 86 Federal programs have one or more provisions that change in response to a movement of some index, usually a measure of prices or wages. In total, these formally indexed programs comprise nearly 30 percent of Federal spending. In addition, another 40 percent of Federal spending, while not formally indexed, is considered "uncontrollable" by the very nature of the expenditures. This includes interest on the national debt, which amounts to 11 percent of total spending outlays from prior year approriations, which amount to 17 percent of total spending; and entitlement and mandatory spending that is not indexed, which amounts to 12 percent of total spending. This last category includes some open-ended programs, which while not formally indexed, are very responsive to inflation, such as Medicare and Medicaid.

While we do not portend that passage of H.R. 3790 would resolve all of our deficit programs, we believe it represents an important start by proposing a $180 billion reduction in the projected deficits over the 6 year time frame. Under the most current economic projections (August 1983), the Congressional Budget Office estimates deficit reductions as follows:

DEFICIT REDUCTION FROM H.R. 3790

[In billions of dollars]

	1985	1986	1987	1988	1989	1990	1985–90
Reduced outlays	3.2	7.7	12.3	16.9	21.6	25.3	87.0
Increased revenues	2.4	6.7	11.6	17.3	23.9	31.3	93.2
Total deficit reduction	5.6	14.4	23.9	34.2	45.5	56.6	180.2

There are three important features to note about these deficit reductions. First, they are about equally balanced between outlay reductions and increased revenues. Second, they are cumulative, growing larger in later years, as is appropriate when the structural deficit otherwise is increasing. Third, they are permanent, even though the indexing-reduction program itself is temporary; when full indexing is resumed in 1990, the deficit will remain about $57 billion smaller than it would have been without the program. In this sense, the indexing reduction makes a one-time adjustment to both revenue and spending levels to help restore budgetary control.

As the numbers clearly indicate, H.R. 3790 is not a complete solution for our budget problem. Obviously, restraint in defense spending, reforms to reduce costs and maintain solvency in Medicare and Medicaid, and continued restraint in some other domestic spending programs will be required to eliminate the deficit or even to bring it down to a manageable level. But a reduction of $57 billion, about 1 percent of GNP, through implementation of H.R. 3790, would take us a large step towards restoring budgetary control.

The prospect of huge future deficits in the range of $200 billion per year, as projected under current policies by the CBO, will have grave economic consequences. Future budget deficits in the range of $200 billion per year, will reduce capital formation, damage our competitiveness in world trade, destroy jobs in export and import-competing industries, and eventually imperil recovery. The credit market demand necessary to finance additional government borrowing will keep interest rates high, holding back recovery in housing, autos and other industries which are closely dependent on the credit market and interest rates. Further, eventual pressures on the Federal Reserve to monetize these large deficits will increase the risks of a reacceleration of inflation.

Lawmakers did not anticipate the rampant increase in inflation which resulted in explosive growth in indexed spending during the late 1970's and early 1980's. Deficiencies in indexing resulted in overcompensation of individuals in some circumstances. The threat which continued automatic increases in Federal spending and reductions in Federal revenues cause to our budgetary position is a serious problem on which both the Congress and the American people must begin to focus. The demands being placed upon our fiscal capacity by the rapid rise in certain domestic programs, the sharply increasing proportion of elderly citizens in the population, and the inexorable rise in medical costs, suggests to us that it is unlikely that we will see normal fiscal circumstances in the foreseeable future. Business-as-usual budgets are irresponsible in the midst of a fiscal crisis. We, therefore, believe that passage of H.R. 3790 is a necessary first step toward returning the budget to a fiscally sound position.

JAMES R. JONES.
BERYL ANTHONY, Jr.
CARROLL CAMPBELL.

SUPPLEMENTAL VIEW ON IDB'S SUBMITTED BY CONGRESSMEN JIM JONES, CARROLL, CAMPELL, AND BERYL ANTHONY

Last year, we enacted far-reaching restrictions on the industrial development bond program (IDBs) in the Tax Equity and Fiscal Responsibility Act (TEFRA). These restrictions not only eliminated most of the abuses in the program, but also mandated reporting requirements which will give Congress information necessary for effective oversight of the IDB program. A mere nine months have passed since the TEFRA changes have become effective, and far more restrictive provisions have been approved by the Ways and Means Committee.

Our disagreement with the action taken by the Committee arises from the fact that we believe that if further changes (aside from denying a tax-exemption to FSLIC/FDIC-backed bonds or prohibiting tax-exempt bonds to be used for liquor stores, skyboxes, airplanes and gambling establishments) are made, they should be made only after Congress has taken the time to collect sufficient data to reveal the effects of the TEFRA changes on the program and to study that data.

It has been offered that new restrictions were needed because volume was out of control. According to the preliminary Treasury reports on 1983 activity, however, the annualized small issue IDB volume for 1983 will be more than 50 percent lower than Treasury's report on the 1982 volume, and may be at least 60 percent lower than the small issue volume Treasury projected for 1983.

We not only question the wisdom of enacting new restrictions on IDBs before the data collected pursuant to TEFRA are studied, but we specifically object to the adoption of individual state volume caps. A comprehensive volume cap on all IDBs pits legitimate public purposes against one another as well as one community against another, as they all vie to be included within a particular state's IDB volume. The $150-per capita limit proposed for the volume cap imposes a sizeable reduction in IDBs in a number of states without regard to their particular needs. This volume cap also will require a new layer of bureaucracy to administer what many state officials have termed a "nightmare" (e.g., keeping a program within its overall volume limit). Most importantly, the volume cap will, to a large degree, eliminate the prerogative of local officials to solve their own problems and force governors or legislators to prioritize among uses in the state.

Prohibiting the use of IDBs for the purchase of land would eliminate IDB financings for a major component of any job-creating project. Precluding the use of IDBs for land acquisition also discriminates against urban areas or states where land prices are high, as well as projects such as industrial parks or alternative energy projects where land is a significant part of the project.

Many states use IDBs for the purchase of existing facilities as a vital economic development tool in their communities. There is no apparent justification for discriminating against existing facilities which communities might wish to use to foster economic development.

The provision capping outstanding small issue IDBs will prevent many industrial projects from going forward. The usefulness of IDBs is related to the particular project and not by whom it is used. More importantly, a $40 million limit on principal users is an overreaction to a non-problem, since a 1981 CBO report showed that 93 percent of the small issue IDBs were used by small business. Imposing a $40 million cap on each principal user discriminates against high technology industries, to which so many recession-ridden areas in the country are turning for economic revitalization, as well as those areas which feel that high tech is an important component of their futures. Such a cap also discriminates against capital-intensive industries or small firms which feel the need to make major capital investments in order to remain competitive. Many labor-intensive projects (i.e., commercial projects) will also be harmed under such a proposal.

The arbitrage limits set by the Committee will harm significantly a number of groups. For example, multi-family housing is a high-risk venture and the issuance costs could well exceed the profits available through arbitrage. It is therefore likely that these new rules will result in a loss to multi-family housing projects with the only way to offset this loss being sizeable contributions from State legislatures. However, such contributions could either be infeasible economically for the states, or prohibited by state constitutions. Thus, we stand to lose more than we stand to gain. Moreover, despite Treasury allegations to the contrary during Committee consideration, current law contains arbitrage restrictions on IDBs. It also cannot be overlooked that these new limits will also work a hardship on educational institutions which have already been hit hard by shrinking federal aid and who also rely on arbitrage profits to pay issuance costs.

Last year, Congress provided four exceptions to the IDB restrictions contained in TEFRA. We feel the Committee did not give adequate consideration as to whether these uses should be included in the volume cap and ACRS restrictions. Specifically, we feel exceptions should have been provided for, among others, pollution control facilities and solid waste disposal.

Pollution control facilities are only installed because the law requires that they be. Federal environmental requirements fix the volume and general timing for pollution control financings. A volume cap would be an additional, artificial constraint. In addition, the cap would discriminate against longer term projects and favor those put together quickly to take advantage of the cap. The impact would be unduly harsh for projects where substantial planning, engineering and environmental approvals must occur before the financing can take place. These projects produce benefits for the public and further restrictions will only impede efforts by companies to undertake the costly and non-productive capital improvement necessary to comply with the Clean Air and Water Acts.

Moreover, solid waste disposal facilities are an integral part of the national goal to preserve environmental quality. These facilities are an environmentally sound, effective method of disposing of millions of tons of waste that would otherwise have to be disposed of by far more ecologically damaging methods. Many solid waste recovery systems are technologically advanced, very expensive, and contain elements of economic risk that must be borne by private capital partners. More than 200 communities are currently planning waste-to-energy projects which should be encouraged, not discouraged. Congress has previously acknowledged the importance of these quasi-public endeavors. We should have continued the exceptions provided for these uses when industrial development bond money is used to finance these facilities.

Although the Committee bill contains many needed tax reforms and revisions, there are strong feeling among a number of Members that further action on IDBs should have been deferred. We feel that a more prudent course for the House of Representatives to take would be to collect and study the data we mandated in TEFRA. The industrial development bond program is too vital an economic tool to rush action at this time.

James R. Jones.
Carroll Campbell.
Beryl Anthony, Jr.

SUPPLEMENTAL VIEWS

Although some of us are co-sponsors of H.R. 4170, we want to make it absolutely clear that we do not support the material printed with Title X relating to mandatary assignment of physicians under the Medicare program. This material is not part of the bill, even though it is published in this Committee report. It is legislatively separate and is to be offered as an amendment to the bill during floor debate.

It is important to note that this material was defeated by a recorded vote in the Committee. Although a majority of Members opposed it then, the Committee agreed later to its submission to the entire House as an amendment.

We intend to vote against this amendment, and we urge our colleagues to join us, because, it would:

(1) Be disruptive to an already problem-riddled Medicare program. (Depending on reaction to it, beneficiaries' access to Medicare services could be reduced).

(2) Be premature, in that studies already are underway, or planned, to determine whether such action would be effective. (A quadrennial Social Security Advisory Council now is reviewing this and other Medicare issues, and will report to the Congress later this year. The Committee itself is sponsoring a major conference on Medicare issues (November 29–30) in conjunction with the Congressional Budget Office and the Congressional Research Service. Current law requires the Secretary of Health and Human Services to report to the Congress, no later than 1985, on the merits of a prospective payment system for physicians' fees.)

(3) Not produce savings of any substantial financial help to Medicare. The main Medicare trust fund is expected to be depleted by the end of this decade and program shortfalls over the next 15–20 years must be measured in terms of hundreds of billions of dollars. This amendment would "save", over the next three years, less than $1 billion, or a tiny fraction of the amount needed to make Medicare whole. It is analogous to using a fire extinguisher on Mt. St. Helens.

The beneficiaries are not going to be helped by this amendment, the physicians are not going to be helped by this amendment, and the taxpayers are not going to be helped by this amendment. No one needs it.

BARBER CONABLE.
JOHN J. DUNCAN.
BILL ARCHER.
GUY VANDER JAGT.
PHILIP M. CRANE.
BILL FRENZEL.
JIM MARTIN.
DICK SCHULZE.
BILL GRADISON.
W. HENSON MOORE.
CARROLL CAMPBELL.
WILLIAM M. THOMAS.

ADDITIONAL VIEWS OF HON. BILL FRENZEL

In general, I support this package of tax proposals. It is so large and complicated that no person could completely agree with all of its components. Surely I do not. But, overall, it's a good piece of work.

It is important to reognize, however, that this bill is not designed to increase taxes. It contains some provisions which will result in a reduction of revenues, and others which will increase revenues. The overall result of the bill will be an increase in revenues to the Treasury, but I did not join in the process of developing the proposal with that result in mind. Rather, the underlying rationale was to make necessary changes in tax laws which were expiring, or which needed improvement.

An important title deals with the tax treatment of private foundations. The Congress last conducted a comprehensive review of private foundation tax law in 1969. In my judgment, this bill contains worthy and long overdue improvements. The changes in the treatment of gifts of appreciated stock to private foundations and the increases in the contribution limits of cash gifts to private foundations, along with the liberalized carryforward of excess contributions provision, will help private foundations attract more funds to continue their needed, charitable work.

I consider the Committee's action a first step toward the eventual, and justified, equalization of the tax treatment of private foundations with that of public charities.

The bill also contains a provision which extends, for five more years, the single family mortgage subsidy bond program. This proposal, which was developed from a bill that my colleague Tom Downey and I introduced early this year, and which had over 300 cosponsors in the House, will help to insure that low to moderate income families will continue to have a program available to them to help them purchase their first home. It is a good program, and the Committee is to be commended for including it in this package.

A third provision, which has been included in the mortgage subsidy bond title of the bill, would impose the most far reaching restrictions on the use of tax-exempt bonds ever approved by the Ways and Means Committee. The centerpiece of the proposal is a $150 per capita volume cap limiting the amount of tax-exempt bonds a state could issue in any single year. The volume cap does not include limitations on the amount of bonds which can be issued by tax-exempt organizations, nor does it limit the amount of public purpose general obligation bonds which can be issued by state and local governments.

A volume cap on tax-exempt bonds was not my first choice as a means of restricting their use. The Committee, however, felt that it was very important to slow the future growth of the use of the bonds due to the explosion of growth which has occurred in the use of tax-exempt bonds in recent years. Tax-exempt bonds generally should be the financing vehicle of last resort. In times of short supply of credit, or high interest rates, they are often the only game in town.

The bill reinforces this point, and discourages the perception that tax-exempts are designed to be a first choice as a means of financing private purpose projects. In choosing a cap rather than further severe restrictions in depreciation, the Committee attempted to develop an equitable and uniform system for limiting the rapid growth of tax-exempt bonds.

Another of the major titles of the bill provides a complete revision of the taxation of life insurance companies. The current law governing the tax treatment of life insurance was written in 1959, and was woefully inadequate for dealing with the modern life insurance industry.

Last year the Congress could not agree on a new system of life insurance taxation, and temporary, "stop-gap" legislation, was enacted instead. Subcommittee Chairman Pete Stark and Congressman Henson Moore took on the challenge this year and were able to develop, and shepherd through the Committee, a comprehensive re-write of the taxation of life insurance that received the support of most of the various segments of the life insurance industry.

In view of the acrimony that existed between the two major industry groups, the stocks and the mutuals, this was not easy task. Although I strongly feel that the mutuals were assigned a revenue burden that was disproportionately large in comparison to their share of life insurance business, I think Messrs. Stark and Moore deserve special commendation.

Fringe benefits rules, which have been included in another title of the bill, should finally lay to rest much of the uncertainty that has existed over the past several years concerning the tax status of non-statutory fringe benefits. Ever since the day the Treasury first proposed taxing fringe benefits, the Congress has imposed, and reimposed, a moratorium on the issue, with the vague promise that Congress would sometime provide definitive guidance. The future is now, and the provision in the bill at long last provides long needed guidelines as to what is or is not a taxable fringe benefit.

More importantly, it essentially maintains the tax-exempt status of the fringe benefits that are most important to many working taxpayers. Airline passes to airline employees, tuition remissions for college and university employees, discounts to retail employees, health and exercise facilities, subsidized cafeterias, etc. have all generally been treated as tax-free fringe benefits under the bill. There are still many ambiguities in the bill, and I am certain that, at some point in the near future, we will have to make several corrections in the bill in order to resolve issues of which we are not now aware. Generally, however, the proposal is a good one.

The Tax Law Simplification and Improvement Act of 1983 has also been included in this package. The proposal, which contains dozens of generally pro-taxpayer changes in the Tax Code, is designed to clarify and simplify tax provisions which were either statutorily deficient, had created confusion in tax administration, or had other deficiencies. Passage of this provision should make life easier for many taxpayers.

A title has also been included in the package which provides for technical corrections to the Tax Equity and Fiscal Responsibility Act of 1982, the Highway Revenue Act of 1982, the Social Security Amendments Act of 1983, and other recent tax laws. More often than not, technical corrections bills become far more than technical. However, these provisions appear to be technical in nature.

Another major provision in the bill concerns the tax treatment of leases involving tax-exempt entities. What originally started out as an oversight hearing into Federal leases blossomed into a comprehensive policy statement severly restricting the tax benefits that would generally be available in a lease transaction with a tax-exempt entity. In general, I think that the policy behind the bill is good. Prior to this bill, a city could construct its sports arena with Tax Exempt Bonds, sell it to a taxable enity, and then lease it back. The city then reaps a double benefit, and the investor, for relatively low risk, is able to purchase tax deductions. The practice is a raid on the Federal Treasury through a back door device, and the Committee was right in stopping it.

Unfortunately, while most of the bill is necessary, the restrictions are imposed in an unecessarily broad manner. The problem originally before the Committee generally involved tax motivated leases of expensive personal property such as ships and airplanes and of real property sale-leasebacks. In its final form, however, the bill also applies to what generally would be considered ordinary leases that happened to involve a tax-exempt entity. The Committee recognized that this sledgehammer approach would not work and agreed to exempt from the bill's restrictions most leases of high tech computer, hospital and communications equipment. Due to a misunderstanding in the conceptual mark-up of the bill, the exclusion for high tech computer, hospital and communications equipment was not applied to leases to the Federal government. This had the effect of eliminating at least half of the benefit of the amendment. Because of the problems inherent in reopening any section of a package as complex as this, the amendment was not modified in the final approval of the bill to reflect my original intent—that the exclusion for high tech computer, hospital and communications equipment apply to all leases, and that they not be restricted in the case of leases to the Federal government. The Chairman, however, understands that there was a communications problem, and I beleive he will make every effort to deal with the problem in the Conference Committee

The bill also contains a title dealing with miscellaneous revenue provisions, most of which are designed to deal with specific problems that have come to the attention of the Committee. In my judgment, the provisions all have merit, and their inclusion is not objectionable. However, there are many more minor, almost technical provisions, which could have, and probably should have, been included in the bill. Some of these deals with non-controversial, no-revenue-impact changes in the Tax Code, while others deal with provisions which will expire at the end of this year. The Chairman has indicated that there will be more hearings within the next few months. I hope there will be an opportunity to enact some of these miscellaneous provisions this year.

A non-tax title in the package involves an attempt by the Committee to meet its spending reduction obligations under the budget resolution. The provision involves modifications in Medicare. When the Medicare bill was brought before the Committee, it originally contained a proposal to freeze physician charges for treatment of Medicare payments, and to require that any physician who was affiliated with a hospital agree to take all Medicare patients that might be assigned to the physician. While there is obviously merit in trying to reduce physician charges under Medicare until some form of cost containment similar to the DRGs used for hospitals can be applied to physician, I think the mandatory assignment provision in the bill was the wrong way to go about it. The Committee was wise to delete the mandatory assignment provision from the bill, and I hope that the provision will be defeated when it is offered as a committee amendment on the House floor.

I have no objection to the three changes in Trade Adjustment Assistance in the bill. One of them relating to relocation expense is important and necessary.

As I stated earlier, while it was not the Committee's main intent to raise revenues in this package, some revenue will be raised. There is some dispute, however, over the actual amount. The tax-exempt bond title of the bill is a prime example of this problem. The bill assigns a several billion dollar loss to the mortgage revenue bond provisions of the bill, which is offset by the restrictions placed on all other tax-exempt bonds. The budget baseline, however, should have reflected the extension of the mortgage revenue bond program, as there was already a majority of the House sponsoring an extension when the budget was passed, and there was no doubt that the mortgage bond program would be extended.

The offsetting pickup of revenues from the other restrictions on tax-exempt bonds is an equally suspicious number. The only hard data the Committee had on which to base its projections was information gathered for the first half of this year under the reporting requirements imposed by TEFRA. Committee Members repeatedly noted that the predicted effects of the restrictions on bond activity were highly speculative. The new restrictions make revenue analysis pure guess work.

At least two amendments, and possibly more, will be in order on the Floor dealing with substantial increases in taxes. One of the amendments would raise substantial amounts of revenue by freezing most of the future tax reductions enacted in the 1981 Economic Recovery Tax Act. While the most popular of the 1981 provisions, the increases in the estate tax exemption, indexing, and the increase in the charitable contributions deduction, have been maintained, the amendment will repeal other important items such as the reduction of the maximum estate tax rate, the increase in the exclusion for Americans living and working abroad, and the 15% interest income exclusion.

The other major amendment is designed to raise over $73 billion dollars. It will do so by taking $20 billion dollars back out of the tax cut given to the American people last July, repealing all of the tax cuts enacted in 1981 that have not taken effect except for indexing, increasing taxes on capital gains, increasing the depreciation period for real property, eliminating one-half of the business entertainment deduction, and others.

This country is not undertaxed. Most American do not want more taxes. They want deficits reduced by cutting federal spending. Tax increases of the magnitude proposed could have the disastrous result of stifling our recovery, and putting the country back into a recession. It is unfair to the millions of Americans who have recently returned to work for the Congress to take their jobs away by sending the economy back into a recession. Raising taxes is always to be done with reluctance. It is never to be done in an early stage of recovery. All amendments which would increase revenues above those in H.R. 4170 should be resoundingly defeated.

This bill is far from perfect, but it makes many necessary changes in the Tax Code. Some of the provisions make me uncomfortable, but the bill is a good starting point. Without it, many taxpayers (such as the life insuracnce industry, employees receiving fringe benefits, Social Security Disability recipients, and others) will be left in a state of limbo. There will be an opportunity to improve this bill in the Senate, and again in the Conference Committee. If the bill is not amended to the Members' satisfaction after the Conference Committee, that would be an appropriate time to vote against it. H.R. 4170 as it now stands, however, should be approved, so that the improving process can continue.

BILL FRENZEL.

ADDITIONAL SUPPLEMENTAL VIEWS OF HON. JAMES G. MARTIN

On October 19, the Ways and Means Committee completed action on the Medicare portion of H.R. 4170. At that time, the Committee defeated in an 18–15 vote an amendment to require physicians to accept assignments for all services provided to Medicare hospital inpatients.

In order to enforce the proposed policy, the amendment would have mandated that hospitals, participating in Medicare, require all physicians providing services in the hospital to sign an agreement to accept assignment as a condition of either securing or maintaining admitting privileges.

Notwithstanding Committee rejection of the proposal, it was agreed to allow this matter to be brought before the House as a Committee amendment. Certainly this is an unusual procedure, in view of the Committee vote and the flawed nature of the proposal. In closed session, even its advocates likened this unprecedented compulsion to the military draft. As a penalty for not following orders, a physician would be subject to 6 months in jail, a fine of up to $2,000 or both.

The proponents of this misguided proposal would have us believe that physicians are given a choice under its all-or-nothing approach. For many physicians, however, this so-called choice would be deciding whether they could continue to practice medicine in some hospitals, particularly those which serve large numbers of Medicare patients. Other physicians, outraged by such heavy-handed government action, would stop accepting Medicare patients. The fact is, no one really knows what might happen if this proposal were to become law. Certainly the potential for major program disruption and confusion is all too real.

As a member of the Subcommittee on Health of the Committee on Ways and Means, I am acutely aware of the financing problems we face in the Medicare program and I do not question the good intentions of my colleagues who seek to reduce the costs of the program without increasing the costs to the beneficiaries. I share their concern and that is why I, along with 28 other Members of the Committee, rejected a proposal to place a temporary freeze on Medicare payments to physicians.

Although the mandatory assignment "solution" was crafted to avoid a shift in costs as a result of the freeze, it would certainly fail to achieve its intended purpose. The unintended consequences of imposing involuntary servitude upon medical doctors could be quite profoundly severe. If a government can impose such an obligation upon one profession to deliver services under threat of criminal penalties, what profession will be next? And what profession ultimately would remain free?

You might want to think about that before we start down that road.

JIM MARTIN.

ADDITIONAL SUPPLEMENTAL VIEWS OF HON. CARROLL A. CAMPBELL, JR.

Many foundations have sought a diversity of relief from section 4943 of the tax code, which requires a private foundation to dispose of its ownership of any business enterprise within a specified period of time. My concern lies with those foundations that own local newspapers and are forced to sell them. Section 4943 encourages economic and editorial concentration in a few large newspaper chains, and discourages local control over the independent newspapers involved under this law.

I believe we must make an effort to retain local control over our independent newspapers.

Carroll Campbell.